# FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 42-701.2(l)(2)

Specific Purpose:

This section is being adopted to provide the definition of "learning disabilities."

Factual Basis:

This section is necessary to define learning disabilities to ensure consistency in the treatment of CalWORKs welfare-to-work recipients with learning disabilities when implementing Welfare and Institutions Code Section 11325.25, which requires a recipient with a suspected learning or medical problem to be referred to an evaluation to determine how this condition impacts his/her ability to successfully complete or benefit from a welfare-to-work assignment. The definition was developed by a learning disabilities task force comprised of staff from various State departments, legal rights organizations, and learning disabilities advocacy groups.

Section 42-722

Specific Purpose:

This section is being adopted to provide information about learning disabilities protocols and standards in the Welfare-to-Work Program.

Factual Basis:

This section was developed after consultation with a learning disabilities task force comprised of staff from various State departments, legal rights organizations, and learning disabilities advocacy groups. This section is developed under the provisions of Welfare and Institutions Code Section 11325.25(a) that requires CalWORKs welfare-to-work participants with a suspected learning or medical problem be referred to an evaluation, Welfare and Institutions Code Section 11325.4 that specifies the assessment process, as added by Assembly Bill 1542 (Chapter 270, Statutes of 1997), and Welfare and Institutions Code Section 10553 that gives the Director authority to adopt regulations to effectively administer the program.

Sections 42-722.1 and .11

Specific Purpose:

These sections are being adopted to list the CalWORKs welfare-to-work learning disabilities screening requirements and to specify that counties must offer learning disabilities screening to new CalWORKs welfare-to-work participants at the first welfare-to-work contact or by no later than assessment.

Factual Basis:

These sections are necessary to specify when the learning disabilities screening is offered to new CalWORKs welfare-to-work participants. These sections are required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and were developed under the provisions of Welfare and Institutions Code Section 10553, which provides the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Post First 15-Day Renotice Modification:

In response to testimony, Section 42-722.111 is being added to clarify that all counties must offer the learning disabilities screening and evaluation, both verbally and in writing.

Section 42-722.12

Specific Purpose:

This section is being adopted to specify that when counties offer learning disabilities screening later than the first welfare-to-work contact, they must still provide a description of the screening, and the purpose and benefits of the screening, at the first welfare-to-work contact.

Factual Basis:

This section is necessary to specify that if a participant is not offered a learning disabilities screening at the first welfare-to-work contact, counties must provide detailed information regarding learning disabilities screening during the first welfare-to-work contact. The section also provides flexibility to the counties for scheduling the learning disabilities screening and ensures that participants are made aware of the screening/evaluation process, even if they are not offered the screening at the first welfare-to-work contact. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

At the Department's discretion, this section is being amended to replace the phrase "must still" with the phrase "are required to." This amendment is necessary to provide clarity.

The phrase "screening and the" is deleted. The phrase "and evaluation" is being added after the word "screening" to ensure that counties provide information to participants about both learning disabilities screening and evaluation to ensure sufficient information is made available to participants so that they can make an informative decision regarding accepting or declining the offer of learning disability screening and/or evaluation.

In response to testimony, this section is being amended to add a new Section 42-722.121 et seq. to specify the information counties are required to share with participants regarding learning disabilities screening and evaluation to ensure that participants receive uniform and correct information.

Post First 15-Day Renotice Modification:

In response to testimony, the phrase "that choose to offer a screening for learning disabilities later than the first welfare-to-work contact" is being deleted and moved to Section 42-722.13, and the phrase "both verbally and in writing" is being added for clarity to ensure that all counties provide the learning disabilities screening and evaluation information, both verbally and in writing, at the first welfare-to-work contact.

Section 42-722.121 et seq. (Post-Hearing Modification)

Specific Purpose:

At the Department's discretion and in response to testimony, this section is being added to instruct counties as to the specific information counties must provide participants regarding learning disabilities screening and evaluation.

Factual Basis:

This section is necessary to ensure that participants are aware of their ability to be screened and/or evaluated for learning disabilities. This section is also necessary to assist counties in encouraging CalWORKs welfare-to-work participants to agree to be screened and/or evaluated for learning disabilities, so counties can determine what, if any, accommodations are needed by the clients to successfully complete their welfare-to-work activities. This section is developed under Welfare and Institutions Code Section 10553, which provides the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Post First 15-Day Renotice Modification:

In response to testimony, Section 42-722.121(g) is being amended for clarity and to make the terms in the section more user-friendly. The word "aptitudes" is being deleted and replaced with the phrase "natural talents and abilities;" the phrase "information processing" is being deleted and replaced with the phrase "ability to follow verbal and written information;" and the phrase "vocational interest" is being deleted and replaced with the phrase "job and career interests."

In response to testimony, Section 42-722.121(i) is being added to instruct counties to inform limited-English proficient CalWORKs welfare-to-work participants for whom no screening tool is available in their primary language, that they have the right to request a referral to a learning disabilities evaluation. This section is necessary to ensure that participants are aware of their right to request a referral to a learning disabilities evaluation.

Section 42-722.13

Specific Purpose:

This section is being adopted to specify that counties must offer, or provide information about, the learning disabilities screening verbally and in writing.

Factual Basis:

This section is necessary to specify that counties must offer or provide information about the learning disabilities screening, both verbally and in writing, to ensure that participants are aware of the ability to be screened for learning disabilities. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

At Department's discretion, the phrase "and evaluation," is added to be consistent with Section 42-722.12. This amendment is necessary to provide clarity. Grammatical corrections are also made for clarity.

Post First 15-Day Renotice Modification:

The language in this section is being deleted in response to testimony, as the information previously contained in this section has been incorporated into Sections 42-722.111 and .12.

In response to testimony, and for clarity, this section is being amended to specify that counties offering learning disabilities screening later than the first welfare-to-work contact, must still provide information about the screening, including its purpose and benefits of the

screening, at the first welfare-to-work contact. This section is required to ensure the consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Section 42-722.14

Specific Purpose:

This section is being adopted to specify that recipients agreeing to a learning disabilities screening must be screened before they are assigned to another welfare-to-work activity.

Factual Basis:

This section is necessary to specify that participants requesting learning disabilities screening must be screened prior to assignment to a welfare-to-work activity, so that if they are determined to have a learning disability, their needs are identified and addressed prior to the assignment. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

In response to testimony, the phrase "at any time during their welfare-to-work participation" is being added for clarity.

At the Department's discretion, a new Section 42-722.141 is being added to clarify that a learning disability screening must be provided only to those participants who have not been screened.

In response to testimony, a new Section 42-722.142 is being added to ensure that counties give participants who are in welfare-to-work activities good cause to attend a learning disability screening. This amendment is necessary to provide clarity.

Section 42-722.15 et seq.

Specific Purpose:

This section is being adopted to specify that counties must offer learning disabilities screening to current CalWORKs welfare-to-work participants who were not previously offered a screening when the following events occur: (a) the county, service provider, or participant suspects that a learning disability exists; (b) an individual is in the good cause

determination, compliance, or sanction process; or (c) an individual is failing to maintain satisfactory progress in his/her welfare-to-work activities.

Factual Basis:

This section is necessary to instruct counties as to when and how the learning disabilities screening is offered to current CalWORKs welfare-to-work participants. If the county has not previously offered the learning disabilities screening to a welfare-to-work participant, offering the screening when any of the three events mentioned occurs will assist counties to determine whether the individual has a learning disability at the times when the individual is exhibiting participation problems and, if necessary, provide accommodations to assist him/her to successfully participate in his/her welfare-to-work assignment. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

This section is being deleted in response to testimony pointing out that counties should have offered a screening to all CalWORKs recipients by this point in the process.

Section 42-722.16 et seq. (Renumbered to Section 42-722.15 et seq.)

Specific Purpose:

This section is being adopted to specify that, for limited-English proficient CalWORKs welfare-to-work participants for whom no validated screening tool exists, counties must determine whether the participants have a learning disability through discussions with, and/or observations of, the participants. The determination of whether a new or current limited-English proficient participant may have a learning disability must be made within the time frames cited in Sections 42-722.11 and .15, respectively. If the determination indicates a potential learning disability, the county must refer the participants to a learning disability evaluation in accordance with Section 42-722.5.

Factual Basis:

This section is necessary to instruct counties that they must determine if limited-English proficient participants have learning disabilities within the same time frames as that required for other CalWORKs welfare-to-work participants. This section is also necessary to provide guidance to counties on methods to make those determinations, given that no screening tools for limited-English proficient individuals are currently available. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the provisions of Welfare and

Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

This section is renumbered to Section 42-722.15 to maintain numerical consistency because of the deletion of proposed Section 42-722.15.

In response to testimony and for clarity, renumbered Section 42-722.15 is being amended to add the word "potential" and delete the word "may" and the phrase "through discussions with, and/or observations of, the participants." This section is also being amended for purposes of clarity to provide additional guidance to counties on methods to determine if limited-English proficient participants have a potential learning disability.

In response to testimony, Handbook Section 42-722.151 et seq. is added to expand the examples of methods for counties to use to determine if a limited-English proficient participant has a potential learning disability. This amendment is necessary to provide counties additional guidance on methods to make those determinations, given that no screening tools for limited-English proficient individuals are currently available.

Existing Sections 42-722.161 and .162 are renumbered to Sections 42-722.152 and .153 to maintain numerical consistency because of the addition of a new Handbook Section 42-722.151. These sections are further amended to correct cross-references due to the renumbering of the referenced sections.

Section 42-722.16 (Post-Hearing Modification)

Specific Purpose:

In response to testimony, this section is being added to provide guidance to counties regarding the priority of referrals when participants possess concurrent health, behavioral health and learning disabilities problems. In these cases, counties should refer participants for health or behavioral health evaluation prior to the learning disabilities evaluation to determine if a health problem, and not a learning disability, is the cause of an individual's learning problems.

Factual Basis:

This section is necessary for consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the Director's authority to implement regulations for the effective administration of CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Post First 15-Day Renotice Modification:

In response to testimony and at the Department's discretion, the phrase "during the learning disabilities screening and evaluation process" is being added for clarity.

In response to testimony, Section 42-722.161 is being added to clarify that participants who are referred to health-related evaluations, prior to a learning disabilities screening and/or evaluation shall not be required to sign a waiver, until the health-related issues are identified and addressed, and the participant subsequently declines the learning disabilities screening and/or evaluation.

Handbook Section 42-722.2 et seq.

Specific Purpose/Factual Basis:

This handbook section is being adopted to suggest ways in which the counties can put participants at ease about a learning disabilities screening and/or evaluation. This handbook section is necessary to assist counties in encouraging CalWORKs welfare-to-work participants to agree to be screened and/or evaluated for learning disabilities, so counties can determine what, if any, accommodations are needed by the clients to successfully complete their welfare-to-work activities. This handbook section is developed under Welfare and Institutions Code Section 10553, which provides the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

At the Department's discretion and in response to testimony, this section is being deleted and the information is being incorporated into Sections 42-722.131(a) through (h) to specify the information counties must relay to participants when explaining the benefits of having a learning disabilities screening and evaluation.

The deletion of Section 42-722.2 results in the renumbering of Sections 42-722.3 et seq. through 42.722.9 et seq. to Sections 42-722.2 et seq. through 42.722.8 et seq. The renumbering of these sections is necessary to maintain numerical consistency.

Sections 42-722.3 and .31 et seq. (Post-Hearing Modification - Renumbered to Sections 42-722.2 and .21 et seq.)

Specific Purpose:

These sections are being adopted to instruct counties that, when CalWORKs welfare-to-work participants decline the learning disabilities screening and/or evaluation, the counties must: (1) inform the participants that their welfare-to-work activities will not include any accommodations and that a learning disabilities screening and/or evaluation may be requested at a later time; (2) review the waiver with the participants and obtain their signatures; and (3) document a refusal to sign the waiver, which is equivalent to a signed waiver in the participants' files.

Factual Basis:

These regulations are required to ensure that participants are adequately informed of the impact that declining a learning disabilities screening and/or evaluation has on their welfare-to-work participation and that, even if they decline the screening and/or evaluation, they still can request a screening or evaluation at a later date. Additionally, the regulations regarding the waiver of learning disabilities screenings and/or evaluations are necessary to document the participant's decision to decline a screening or evaluation. These regulations were developed so that counties can consistently implement Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, under the Director's authority to implement regulations for the effective administration of the CalWORK's program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

Renumbered Section 42-722.21 is amended to correct the cross-references due to the renumbering of the referenced sections.

In response to testimony, renumbered Section 42-722.212 is being amended to replace the phrase "ask for" with the word "receive," insert the phrase "upon request," and replace the word "a" with "any." These amendments are necessary to provide clarity.

Renumbered Section 42-722.213 is amended to replace "Review" with "Read and discuss." This amendment is necessary to provide clarity.

Section 42-722.32 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.22 et seq.)

Specific Purpose:

This section is being adopted to specify that a CalWORKs welfare-to-work participant cannot be sanctioned solely on the basis of his/her refusal to be screened and/or evaluated for learning disabilities. However, if a participant declines the screening or evaluation, and subsequently refuses or fails to comply with program requirements or to make satisfactory progress in his/her assigned activity, he/she shall not have good cause on the basis of having a learning disability and shall be subject to the compliance and sanction requirements in accordance with Sections 42-721.2 and .4, respectively.

Factual Basis:

This section is necessary to ensure consistent treatment of CalWORKs welfare-to-work participants who refuse learning disabilities screenings and/or evaluations under Welfare and Institutions Code Sections 11327.4 and 11327.5, which require counties to sanction participants who fail or refuse to comply with program requirements without good cause. This section is developed under the provisions of Welfare and Institutions Code Section

10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

In response to testimony, renumbered Section 42-722.22 is being amended to replace the phrase "solely on the basis" with the word "because." This amendment is necessary to provide clarity.

In response to testimony, renumbered Section 42-722.221 is amended to add the phrase "unless determined to have a learning disability" to clarify that should the participant decline to be screened or evaluated and subsequently does not comply with program requirements, the participant shall not have good cause on the basis of being learning disabled unless he/she is determined to have a learning disability. This amendment is necessary to improve clarity. The cross-reference in this section is also being amended for clarity.

Section 42-722.33 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.23 et seq.)

Specific Purpose:

This section is being adopted to allow participants who decline a learning disabilities screening and/or evaluation to request a screening and/or evaluation at a later time and to require counties to schedule the screening and/or evaluation as soon as administratively possible. Counties are also being instructed to modify the welfare-to-work plan to include any appropriate accommodations needed on a prospective basis only if the evaluation identifies the existence of a learning disability.

Factual Basis:

The section is necessary to require that learning disabilities screening and/or evaluation be scheduled as soon as administratively possible for participants who earlier refused screening and/or evaluation, so that counties can quickly determine whether a participant has a learning disability and needs accommodations to ensure successful participation in assigned activities. This section is also necessary to instruct counties to modify plans for accommodations on a prospective basis only for these participants, since the participants' earlier refusal of the screening and/or evaluation resulted in counties not being able to determine the need for and provide accommodations. This section is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities or medical conditions, and are developed under the Director's authority to implement regulations for the effective administration of CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

Renumbered Section 42-722.23 is amended to correct the cross-reference due to the renumbering of the referenced section.

In response to testimony, renumbered Section 42-722.231 is being amended to add the phrase "and/or welfare-to-work plan, as necessary." This amendment is necessary to clarify that the assignment and welfare-to-work plan will be modified to reflect the appropriate accommodations being provided to the participant.

Section 42-722.24 et seq. (Post-Hearing Modification)

Specific Purpose:

At the discretion of the Department, this section is being added to instruct counties of their options regarding the processing of previous learning disabilities evaluation results which were conducted outside the CalWORKs welfare-to-work program.

Factual Basis:

This section is necessary to clarify that counties have the ability to send the individual for a second opinion when the county questions the validity of a previous evaluation. This section is necessary to effectively implement Welfare and Institutions Code Section 11325.25 which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Section 42-722.25 (Post-Hearing Modification)

Specific Purpose:

At the discretion of the Department and in response to public comments, this section is being added to require that participants do not have to sign a learning disabilities screening and evaluation waiver if the county accepts the past evaluation test results.

Factual Basis:

This section is necessary to clarify when the participant does not have to sign a waiver, and is developed under the provisions of Welfare and Institutions Code Section 10553.

Section 42-722.26 (Post First 15-Day Modification)

Specific Purpose:

In response to testimony, this section is being added to require counties to inform participants that it is accepting or rejecting all or part of a previous learning disabilities evaluation.

Factual Basis:

This section is necessary to ensure that participants are aware of county actions and/or decisions pertaining to their previous evaluation.

Section 42-722.27 (Post First 15-Day Modification)

Specific Purpose:

In response to testimony, this section is being added to clarify that participants who meet specific criteria and are referred directly to a learning disabilities evaluation, without going through the screening process, do not have to sign a waiver.

Factual Basis:

This amendment is necessary to provide clarity.

Section 42-722.4 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.3 et seq.)

Specific Purpose:

This section is being adopted to inform counties that they are responsible for selecting who will administer the learning disabilities screening tool, may contract with qualified professionals who meet specified qualifications, must ensure that screeners have the training to appropriately administer the screening tool, and are required to use a recognized and validated screening tool if one exists in the participant's primary language.

Factual Basis:

This section is necessary to instruct counties that they are responsible for selecting qualified learning disabilities screeners and that the screeners must administer validated screening tools when available. This section is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disability and/or medical conditions, and are developed under Director's authority to adopt regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

In response to testimony, a new Section 42-722.33 is being added to clarify that counties must use bilingual and bicultural staff when conducting a potential learning disabilities determination of limited-English proficient individuals, when no recognized and validated screening tool exists in the participant's primary language. This section is necessary to provide guidance to counties on methods to make those determinations, given that no screening tools for limited-English proficient individuals are currently available. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and is developed under the provisions of Welfare and Institutions Code Section 10553.

Sections 42-722.5 and .51 et seq. (Post-Hearing Modification - Renumbered to Sections 42-722.4 and .41 et seq.)

Specific Purpose:

These sections are being adopted to instruct counties that participants must be referred to a learning disabilities evaluation if they are identified as having a potential for learning disabilities based on the screening tool score, have been previously identified as having learning problems in school, or are suspected for other reasons of having a learning disability, even though results from the learning disabilities screening did not indicate a potential learning disability.

Factual Basis:

These sections are necessary to ensure the consistent implementation of the learning disabilities protocols and Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions. The regulations instruct counties on the specific circumstances under which they must refer participants to learning disabilities evaluations, and are developed under the Director's authority to implement regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

At the Department's discretion, the phrase "have a" is replaced with the word "are" and the phrase "of having a" is being added for clarity.

In response to testimony, renumbered Section 42-722.411 is being amended to delete the word "potential" and add the word "potentially." This amendment is necessary to provide clarity.

At the Department's discretion, a new Section 42-722.414 is being added to include allowing limited-English proficient participants to be referred directly to a learning disabilities evaluation when no validated screening tool exists in the recipient's primary

language in the group of specific circumstances under which participants must be referred to a learning disabilities evaluation. This section is required to ensure consistent implementation of Welfare and Institutions Code Section 11325.25 where no validated screening tool exists. This section, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Section 42-722.52 (Post-Hearing Modification - Renumbered to Section 42-722.42.)

Specific Purpose:

This section is being adopted to instruct counties that they must inform the welfare-to-work participant of how his/her welfare-to-work participation will be affected when he/she declines the learning disabilities evaluation. This section also cross-references Section 42-722.31, which contains the specific steps that counties must follow when the participant declines the evaluation.

Factual Basis:

This regulation is required to ensure that participants are adequately informed of the impact of the decision on their welfare-to-work plan activities when they decline the learning disabilities evaluation. This regulation is developed so that counties will consistently implement Welfare and Institutions Code Section 11325.25, which requires evaluation of participants with suspected learning disabilities and/or medical conditions, and are developed under the Director's authority to implement regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

Renumbered Section 42-722.42 is amended to correct the cross-reference due to the renumbering of the referenced section.

Section 42-722.53 (Post-Hearing Modification - Renumbered to Section 42-722.43.)

Specific Purpose:

This section is being adopted to require counties to refer participants to a learning disabilities evaluation as soon as administratively possible.

Factual Basis:

This section is necessary to ensure that learning disabilities can be identified as soon as possible so that, if necessary, accommodations can be provided to assist individuals successfully participate in their assigned activities. The section is also necessary for consistent implementation of Welfare and Institutions Code Section 11325.25, which

requires evaluations of participants with suspected learning disabilities and/or medical conditions, and are developed under the Director's authority to implement regulations for the effective administration of CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Section 42-722.54 (Post-Hearing Modification - Renumbered to Section 42-722.44.)

Specific Purpose:

This section is being adopted to instruct counties that participants who are identified as having a potential learning disability based on the screening that occurred prior to the assessment process, should be evaluated prior to, or concurrently with, the assessment.

Factual Basis:

This section is necessary to ensure that learning disabilities can be identified as soon as possible so that, if necessary, accommodations can be provided to assist individuals successfully participate in the assigned activities. This section is also necessary consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning and/or medical conditions, and are developed under the Director's authority to implement regulations for the effective administration of CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

In response to testimony, this section is amended to replace the phrase "prior to" with the word "at" and the phrase "or concurrently with" with the phrase "the completion of". Also, the phrase "and have agreed to an evaluation," is also being added. These amendments are necessary to provide clarity.

In response to testimony, a new Section 42-722.441 is being added to instruct counties that when an individual fails to attend the evaluation, he/she will be deemed to have declined the evaluation and the county is to resume the assessment process. The individual is not to be sanctioned for failure to attend the evaluation and shall be able to request a screening or evaluation at a later time. This section is necessary to ensure consistent treatment of CalWORKs welfare-to-work participants who refuse learning disabilities evaluations under Welfare and Institutions Code Sections 11327.4 and 11327.5, which require counties to sanction participants who fail or refuse to comply with program requirements without good cause. This section is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Post First 15-Day Renotice Modification:

In response to testimony, the phrase "and the welfare-to-work plan" is being added to clarify that for participants who are screened prior to the assessment and determined to have a potential learning disability, the evaluation must occur prior to the completion of the assessment and the welfare-to-work plan to ensure that the evaluation results are considered when developing the welfare-to-work plan.

In response to testimony, the phrase "without good cause" is being added in Section 42-722.441 for clarity.

Section 42-722.45 (Post-Hearing Modification)

Specific Purpose:

In response to testimony, this section is added to ensure that counties give participants who are in welfare-to-work activities good cause to attend a learn disability evaluation.

Factual Basis:

This amendment is necessary to provide clarity.

Section 42-722.55 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.46 et seq.)

Specific Purpose:

This section is being adopted to inform counties that they are responsible for using qualified county staff or contracting with other qualified professionals (such as professional private/corporate contractors or qualified staff from community/state colleges or universities, community-based organizations, adult educational facilities, or the Department of Rehabilitation) who use recognized and validated learning disabilities evaluation tools to conduct tests for identifying learning disabilities and determining the appropriate accommodations for participants with learning disabilities. This section also specifies that when no recognized and validated evaluation tools exist in the participant's primary language, the disabilities evaluation professional, using bilingual and/or bicultural staff, as necessary, must determine if a learning disability exist through: 1) discussions with, and/or observations of, the participant; and/or 2) the use of other evaluation tools that may provide pertinent information. Additionally, this section specifies that when a county staff person, service provider, learning disabilities professional, or the participant suspects that the participant has a health or behavioral health problem, in addition to or instead of a learning disability, the county shall refer the participant to an appropriate licensed professional to diagnose that problem.

Factual Basis:

This section is necessary to inform counties that they must use qualified learning disabilities evaluators and that the evaluators must administer validated evaluation tools to ensure that participant needs are properly identified and addressed. This section is also necessary to require counties to provide learning disabilities evaluations to limited-English proficient participants utilizing appropriate bilingual and/or bicultural staff, as necessary, through: 1) discussions with, and/or observations of, the participant; and/or 2) the use of other evaluation tools that may provide pertinent information. Additionally, this section specifies that when a county staff person, service provider, learning disabilities professional, or the participant suspects that the participant has a health or behavioral health problem, in addition to or instead of a learning disability, the county shall refer the participant to an appropriate licensed professional to diagnose that problem. This section is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and are developed under the Director's authority to adopt regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

Section 42-722.55 et seq. is renumbered to Section 42-722.46 et seq. to maintain numerical consistency because of the addition of a new Section 42-722.45.

In response to testimony, a new Handbook Section 42-722.464 is being added to provide examples of appropriate learning disabilities evaluation instruments that counties give to their evaluators. This section is necessary to provide counties with examples of validated evaluation tools that their learning disabilities evaluator should be administering to ensure that participant needs are properly identified and addressed. This section is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and are developed under the Director's authority to adopt regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Section 42-722.554 is renumbered to Section 42-722.465 to maintain numerical consistency because of the addition of a new Section 42-722.464. At the Department's discretion, this section is further amended to add the phrase "to the best of staff ability" for clarity.

In response to testimony, renumbered Sections 42-722.465(a) and (b) are inverted. Also in response to testimony, Section 42-722.465(a) is being amended to add the phrase "appropriately tailored to the individual's cultural background." These amendments are necessary to provide clarity.

Section 42-722.555 is renumbered to Section 42-722.466 to maintain numerical consistency because of the addition of a new Section 42-722.464. At the Department's discretion, this

section is further amended to add the phrase "in accordance with Section 42-722.17" as a cross-reference to improve clarity.

Post First 15-Day Renotice Modification:

Renumbered Section 42-722.466 is being amended to correct the cross-reference.

Sections 42-722.6, .61 et seq., and .62 et seq. (Post-Hearing Modification - Renumbered to Sections 42-722.5, .51 et seq., and .52 et seq.)

Specific Purpose:

These sections are being adopted to inform counties of the required and optional information that must be contained in the learning disabilities evaluation report. The core information in the evaluation report must include: relevant vocational/educational background and history; general aptitude/cognitive level; other issues, such as physical/mental problems; and areas of strength and weakness. Optional information in the evaluation report may include: identification of local resources to assist recipients; documentation of accommodation/assistive technology needs for other purposes; discussion of participant's short/long-term employment goals; and general/specific vocational recommendations, to the extent that the evaluator is qualified to address these issues.

Factual Basis:

These sections are necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, by specifying the specific information, at a minimum, which must be contained in a learning disabilities evaluation report, so that counties have adequate information with which to determine the participants' needs. These regulations were developed by professionals from various State agencies, county welfare departments, the State Legislature, legal rights organizations, and learning disability advocacy groups that have an interest in assisting individuals with learning disabilities to successfully attain educational, vocational, and employment skills. These regulations are developed under the Director's authority to implement regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

At the Department's discretion, renumbered Section 42-722.516 is amended to add the phrase "if identified, any suspected condition other than a learning disability so that the county can make the appropriate referral." This phrase is necessary to ensure that, if a condition other than a learning disability is detected, a referral to the appropriate evaluation is made. The addition of this phrase is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, and is developed under the

provisions of Welfare and Institutions Code Section 10553, which provides the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Renumbered Section 42-722.516 is being reformatted and in response to testimony, Section 42-722.617 is renumbered to Section 42-722.516(f) since it addresses the same topic as renumbered Section 42-722.516. These amendments are necessary to provide clarity.

In response to testimony, renumbered Section 42-722.523(a) is being amended to include the phrase "in consultation with the learning disabilities evaluator, as necessary." This amendment is necessary to ensure coordination between the county and the learning disabilities evaluator, if necessary, in the identification of employment goals, so that counties have adequate information to determine the clients' needs.

Sections 42-722.63 and .631 et seq. (Post-Hearing Modification - Renumbered to Sections 42-722.53 and .531 et seq.)

Specific Purpose:

These sections are being adopted to require that, if the learning disabilities evaluation report establishes that the participant does not have a learning disability, the county must: inform the participant of the evaluation report findings; require the participant to begin or resume his/her welfare-to-work assignment; and inform the participant that special accommodations are not necessary and will not be provided.

Factual Basis:

These sections are necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions. The regulations are also necessary to ensure that the participant understands the findings of the learning disabilities evaluation, that he/she must resume or begin his/her welfare-to-work assignment, and that he/she will not receive special accommodations while participating in assigned welfare-to-work activities. These regulations are developed under the Director’s authority to adopt regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

In response to testimony, renumbered Section 42-722.531(a) is amended to replace the word "inform" with the phrase "provide a copy of the report and an explanation of the evaluation results to" and delete the phrase "of the findings." These amendments are necessary to ensure that the county provides a copy of the evaluation report and discusses it with each participant who is evaluated regardless of the evaluation outcome, to ensure that the participant understands the findings of the learning disabilities evaluation.

In response to testimony, a new Section 42-722.531(d) is being added to instruct counties to inform the participant of the right to file a state hearing if the participant disagrees with the

county actions based on the evaluation. This amendment is necessary to ensure consistent implementation of Welfare and Institutions Code Section11327.8(a), which specifies that the participant may request a state hearing if he/she disagrees with the county actions.

Section 42-722.632 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.532 et seq.)

Specific Purpose:

This section is being adopted to inform the counties that, if the learning disabilities evaluation report establishes that the participant does have a learning disability, the county must integrate the results of the assessment and learning disabilities evaluation into the welfare-to-work plan; provide a copy of the evaluation report to, and review the learning disabilities evaluation report with, the participant; discuss appropriate welfare-to-work activities and reasonable accommodations with the participant; and develop or modify the welfare-to-work plan accordingly.

Factual Basis:

This section is necessary to ensure that participants who are verified as having a learning disability understand the results of their evaluation, the effect that their disability may have on assigned welfare-to-work activities, and appropriate accommodations that may be needed to assist the participants to successfully participate in their welfare-to-work assignments or become employed. This regulation is also necessary to require that these participants' welfare-to-work plans be modified accordingly. This section is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions, under the Director’s authority to adopt regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Final Modification:

At the Department's discretion renumbered Section 42-722.532(c) is being amended to add the phrase "welfare-to-work activities and/or." This amendment is necessary to provide clarity.

In response to testimony, a new Section 42-722.532(d) is being added to instruct counties to inform the participant of the right to file a state hearing if the participant disagrees with the county actions based on the evaluation. This amendment is necessary to ensure consistent implementation of Welfare and Institutions Code Section11327.8(a), which specifies that the participant may request a state hearing if he/she disagrees with the county actions.

Section 42-722.64 et seq. (Post-Hearing Modification. Renumbered to Section 42-722.54 et seq.)

Specific Purpose:

This section is being adopted to inform counties that a participant's medical records and learning disabilities evaluation report are to be treated as confidential documents that are shared on a "need-to-know" basis, and that they must obtain the participant's written consent prior to sharing this information with agencies outside of the county welfare department.

Factual Basis:

This regulation is necessary to specify that a county must obtain the participant's written consent when sharing his/her medical records and written learning disabilities evaluations with individuals or organizations outside of the county welfare department. This regulation is also necessary to preserve the confidentiality rights of the recipient, in accordance to the Welfare and Institutions Code Section 10850.

Section 42-722.7 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.6 et seq.)

Specific Purpose:

This section is being adopted to inform counties that if the evaluation report recommends that an individual be temporarily assigned to fewer hours of participation as a reasonable accommodation, counties should first explore the option of the participant meeting the work participation requirement by participating the lesser number of hours in a primary activity, supplemented with hours in other allowable activities. Supplemental activities, such as remedial training, literacy tutoring, study time, etc., must be supportive of the participant's employment goals and consistent with the learning disabilities evaluation and the welfare-to-work plan. If this is not possible, counties may allow fewer hours of participation in welfare-to-work activities when good cause exists.

Factual Basis:

These sections are necessary to ensure consistent treatment of participants with learning disabilities under Welfare and Institutions Code Section 11325.25 that requires evaluations for learning disabilities and/or medical condition, Welfare and Institutions Code Section 11322.8 that specifies hours of participation in welfare-to-work activities, and Welfare and Institutions Code Section 11320.3(f) that identifies good cause requirements for nonparticipation. These regulations are developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

In response to testimony, renumbered Section 42-722.61 is being amended to clarify, that unless exempt, individuals with a learning disability must meet the CalWORKs work participation requirement. Renumbered Section 42-722.611 is amended to specify that the required hours may include participation in supplemental activities that are supportive of the participant's employment goals and consistent with the learning disabilities evaluation and welfare-to-work plan.

Section 42-722.711(a) is renumbered to Section 42-722.611 to maintain numerical consistency because of the deletion of Section 42-722.711. In response to testimony, renumbered Section 42-722.611(a) is being amended by deleting the phrase "remedial training" and replacing it with the phrase "adult basic education." This amendment is necessary to provide clarity.

In response to testimony Section 42-722.712 is being deleted. For CalWORKs Welfare-to-Work program consistency, participants with learning disabilities will be required to meet the participation requirements unless exempt, in accordance with Welfare and Institutions Code Section 11320.3 which defines the exemption and good cause criteria from participation.

Sections 42-722.8, .81 et seq., and .82 et seq. (Post-Hearing Modification - Renumbered to Sections 42-722.7, .71, and .72 et seq.)

Specific Purpose:

These sections are being adopted to instruct counties that, if the presence of a learning disability is confirmed during the good cause determination or compliance process, they must determine if the disability diminished the participant's ability to participate. This determination may include a consultation with a learning disabilities specialist, if necessary. These regulations also require that if it is determined that the learning disability diminished the participant's ability to participate, he/she shall have good cause for failure to participate and shall not be considered to have an instance of noncompliance. Additionally, the county shall review and modify the welfare-to-work plan, as necessary.

Factual Basis:

These sections are necessary to ensure consistent treatment of participants with learning disabilities under Welfare and Institutions Code Sections 11320.3(f) that specifies good cause criteria for not participating in welfare-to-work activities, Welfare and Institutions Code Section 11327.4 that defines failing to comply with program requirements without good cause, and Welfare and Institutions Code Section 11327.5 that specifies the compliance and sanction processes. These regulations are developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

Section 42-722.811 is being renumbered to Section 42-722.74 to provide a more logical progression of the subparts of Section 42-722.7. In response to testimony, renumbered Section 42-722.74 is being amended to add the phrase "from the evaluation report" and replace the word "will" with "must." These amendments are necessary to provide clarity.

In response to testimony, Section 42-722.721 is being amended to add the phrase "in accordance with Section 42-713 or, if appropriate, be exempt from welfare-to-work requirements, in accordance with Section 42-712. This amendment is necessary to include the regulation reference for good cause, and to clarify that depending on the evaluation result, the county shall also review the case for an exemption.

At the Department's discretion, renumbered Section 42-722.723 is being amended to add the phrase "welfare-to-work activities and/or." This amendment is necessary to provide clarity. This section is further amended to correct the cross-reference due to the renumbering of the referenced section.

Sections 42-722.83 and .84 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.73 et seq.)

Specific Purpose:

These sections are being adopted to instruct counties that if a learning disability is confirmed during the time a participant is attempting to stop his/her sanction, they must determine if the learning disability was a contributing factor to the participant's noncompliance. If it was, the counties are to rescind the sanction, issue any benefits to which the individual is eligible, and review and modify the welfare-to-work plan, as needed.

Factual Basis:

These sections are required to ensure consistent treatment of participants with a learning disability under Welfare and Institutions Code Sections 11320.3(f) that specifies good cause criteria for not participating in welfare-to-work activities, Welfare and Institutions Code Section 11327.4 that defines failing to comply with program requirements without good cause, and Welfare and Institutions Code Section 11327.5 that specifies the compliance and sanction processes. These regulations are developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

Sections 42-722.84, .841, and .842 are renumbered to Sections 42-722.731, .731(a), and .731(d) since they address the topic of rescinding the sanction when the learning disability was a contributing factor to the individual's noncompliance.

At the Department's discretion, and in response to testimony, renumbered Section 42-722.731(a) is further amended to delete the phrase "issue any benefits to which the individual is eligible." The phrase "the participant shall not be considered to have an instance of noncompliance in accordance with Section 42-721.43" is being added for clarity to ensure that the rescinded sanction is not considered to be an instance of noncompliance by the county.

In response to testimony, new Section 42-722.731(b) et seq. is being added to instruct counties that when stopping a welfare-to-work sanction because it is determined that the learning disability was the contributing factor to noncompliance, the county must give the individual the choice of receiving retroactive cash aid payments for the months of improper sanction or prospectively resume the individual's cash aid and welfare-to-work services, effective the date the participant is determined to be no longer sanctioned. A new Section 42-722.731(c) is being added to specify that if the individual chooses cash aid for the rescinded sanction period, all months in that period will be counted against the 60-month time limits, but not against the 18- or 24-month clock.

At the Department's discretion, renumbered Section 42-722.731(d) is being amended to add the phrase "welfare-to-work activities and/or." This amendment is necessary to provide clarity. This section is further amended to correct the cross-reference due to the renumbering of the referenced section.

Section 42-722.75 (Post-Hearing Modification)

Specific Purpose:

New Section 42-722.75 is being added in response to testimony to provide instruction to counties on how to proceed with a sanction when it is determined that a learning disability exists and was not a factor in the sanction.

Factual Basis:

This section is developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Sections 42-722.9 and .91 et seq. (Post-Hearing Modification - Renumbered to Sections 42-722.8 and .81 et seq.)

Specific Purpose:

These sections are being adopted to instruct counties to retrospectively adjust the 18- and 24-month time clock for participants who have a verified learning disability, and either were not screened and evaluated prior to signing the welfare-to-work plan; or were screened and evaluated and found to have a learning disability, and signed a welfare-to-work plan and was not provided appropriate accommodations when they participated in the welfare-to-

work activities; and they did not make satisfactory progress in their welfare-to-work assignments.

Factual Basis:

These regulations are necessary to ensure consistent treatment of welfare-to-work participants with learning disabilities in the implementation of Welfare and Institutions Code Section 11454(a), which specifies the time limit for participation in welfare-to-work activities. The regulations are necessary to provide guidance to the counties on providing back welfare-to-work participation time on the 18- or 24-month time clock in situations when the participant did not receive a learning disabilities screening and/or evaluation and necessary accommodations for a verified learning disability, and he/she did not make satisfactory progress in his/her previous assignments. These sections are developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

Renumbered Section 42-722.814 is amended to add the word "in" for clarity. At the Department's discretion, the phrase "or benefit from the" is being deleted because the term is not quantifiable.

Sections 42-722.812(a) and 42-722.814 are amended to replace the acronym "WTW" with "welfare-to-work" for consistency.

Section 47-722.92 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.82 et seq.)

Specific Purpose:

These sections are being adopted to instruct counties to retrospectively adjust a qualifying participant's 18- and 24-month time limit by: crediting one full month to the 18- and 24-month time clock for every partial or full month that the individual participated in a welfare-to-work activity without appropriate accommodations and amending the welfare-to-work plan to include the appropriate activities and/or accommodations. These sections also require the county to inform the participant, in writing, about the number of months credited back to his/her 18- and 24 month time clock and the reason for the adjustment.

Factual Basis:

These regulations are necessary to ensure consistent treatment of welfare-to-work participants with learning disabilities in the implementation of Welfare and Institutions Code Section 11454(a), which specifies the time limit for participation in welfare-to-work activities. The regulations specify how time is to be credited back when participants were not screened, evaluated and/or did not receive the appropriate accommodations. Additionally, these regulations require counties to notify learning disabled participants of the number of months credited back and the number of months remaining on their welfare-

to-work clocks, and for counties to amend these participants' welfare-to-work plans as appropriate. These sections are developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

Section 42-722.82 is being amended to correct the cross-reference due to the renumbering of the referenced section. This section is further amended to replace the acronym "WTW" with "welfare-to-work" for consistency.

Renumbered Section 42-722.821 is amended to add the word "in" for clarity. At the Department's discretion, renumbered Section 42-722.821 is being further amended to delete the phrase "or benefit from " because the term is not quantifiable.

Section 42-722.93 (Post-Hearing Modification - Renumbered to Section 42-722.83.)

Specific Purpose:

This section is being adopted to instruct counties that participants who refuse to be screened, evaluated, or accommodated for a learning disability are not eligible for an adjustment of their 18- or 24-month time clock on the basis of a learning disability.

Factual Basis:

This section is necessary for the consistent implementation of Welfare and Institutions Code Section 11325.25 that requires recipients with suspected learning or medical problems to be referred to an evaluation and Welfare and Institutions Code Section 11454(a) that specifies the time limit for participation in welfare-to-work activities. The regulation is necessary to clarify that counties must not adjust the 18- and 24-month time clock for individuals who refuse to take advantage of learning disabilities screening, evaluations, or accommodations. This section is developed under the Director’s authority to implement regulations for the effective administration of the CalWORKs program pursuant to Welfare and Institutions Code Section 10553.

Handbook Section 42-722.94 (Post-Hearing Modification - Renumbered to Handbook Section 42-722.84.)

Specific Purpose/Factual Basis:

This handbook section is being adopted to instruct counties that existing CalWORKs policies governing the 60-month time limit are unaffected by the retrospective adjustment of the 18- or 24-month time clock. This handbook section is developed to be consistent with Welfare and Institutions Code Section 11454(b), which limits the receipt of aid to a 60-month time period.

Final Modification:

This section is being amended to correct cross-references due to the renumbering of the referenced sections.

Section 42-722.95 et seq. (Post-Hearing Modification - Renumbered to Section 42-722.85 et seq.)

Specific Purpose:

This section is being adopted to specify that when a learning-disabled welfare-to-work participant moves from one county to another, the first county must obtain the participant's written permission to forward a copy of his/her learning disabilities evaluation report to the second county, so that the second county can properly develop a new, or amend the previous welfare-to-work plan for the participant, as required. This section also specifies that the participant shall not have good cause for failure to participate in the second county based on the second county's failure to provide services and accommodations that are identified in the learning disabilities evaluation report as being necessary for the participant, when the participant refuses permission for the first county to forward the report.

Factual Basis:

This section is necessary to ensure consistent implementation of Welfare and Institutions Code Section 11325.25, which requires evaluations of participants with suspected learning disabilities and/or medical conditions. The regulations require that a participant's confidentiality regarding his/her learning disability is maintained and allows counties to access learning disabilities information, only with the participant's written permission, so that they can provide appropriate welfare-to-work services and accommodations to the participant after he/she moves to another county. This section also requires that the participant shall not have good cause for failure to participate in the second county, based on the second county's failure to provide services and accommodations that are identified in the learning disabilities evaluation report as being necessary for the participant, when the participant refuses permission for the first county to forward the report. These regulations are developed under the provisions of Welfare and Institutions Code Section 10553, which provide the Director with the authority to adopt regulations to effectively administer the CalWORKs program.

Final Modification:

In response to testimony, renumbered Section 42-722.852 is being amended to add the phrases "as necessary," "documents received, reevaluation of," and "and availability of resources" and the word "original"; to replace the word "results" with "review"; and to delete the phrase "if necessary, the learning disabilities evaluation, and." These amendments are necessary to provide additional clarification.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 1542 (Chapter 270, Statutes of 1997)

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the California Constitution because implementation of the regulations will result in no costs or savings.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #2 at the public hearing held on August 20, 2003 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from July 4, 2003 to 5:00 p.m. August 20, 2003:

Children's Advocacy Institute (CAI)
County of Los Angeles Department of Public Social Services (LA DPSS)
County of San Diego Health and Human Services Agency (SD HHSA)
Foster Assessment Center & Testing Service, Inc. (FACTS)
Legal Services of Northern California (LSNC)
Neighborhood Legal Services of Los Angeles County (NLS LAC)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 42-701.2(l)(2)

1. Comment:

"Concern: Some counties in California are *including the developmentally disabled* population under this definition, and some are *excluding* them. The definition is unclear. As defined by the Title V California Education Code, learning disability

inherently includes a demonstration *a minimum of low average to above average intellectual ability* in a combination with the defined manifested difficulties. Remember that a learning disability (in short) means *at least low average* intellectual capacity, and below average academic score or scores. For example, a high school graduate of above average intelligence scoring at the 5th grade level in math would be defined as learning disabled.

"However, a developmentally disabled individual would show a *below average* intellectual capacity and below average academic scores. For example, a person who dropped out of school at the 10th grade level, who scored in the well below average IQ range, and demonstrated a 5th grade math level may be defined as developmentally disabled.

"Recommendation: If it is the intention to ***exclude*** the developmentally disabled population, we recommend the following phrasing at the end of the definition:

> "'…For the purposes of the CalWORKs WTW program, *during the evaluation the participant must demonstrate a minimum of low average intellectual ability,* and these disorders must *significantly* interfere with the participant's ability to obtain employment, retain employment or to participant in welfare-to-work activities.'

"(Please note we have also added the word 'significantly' because almost all disorders 'interfere' to some extent in the participant's ability to obtain or retain employment.)

"Recommendation: However, if it is your intention to ***include*** the developmentally disabled population in this program, we recommend the following phrasing occur at the beginning of the section:

> "'Learning Disabilities' means a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. *For the purposes of the CalWORKs program, this definition encompasses both the learning disabled and developmentally disabled population*.'

"If you are including the developmentally disabled population, we additionally recommend the following phrasing be added to the end of the section:

> "'…For the purposes of the CalWORKs WTW program, these disorders must *significantly* interfere with the participant's ability to obtain employment, retain employment or to participant in welfare-to-work activities.'" (FACTS)

Response:

The Department is not amending this section in response to comments. The definition of learning disability was adopted by consensus, in October 2001, specifically for the CalWORKS program, by the Department's Advisory Workgroup on Learning Disabilities, and was based on the definition developed by the National Joint Committee on Learning Disabilities. The advisory workgroup consisted of key representatives from State agencies, local county welfare departments, legislative staff, welfare rights organizations, and learning disability advocate groups that have an interest in assisting persons with learning disabilities.

Additionally, the Department's proposed sections concern learning disabilities only. There are already existing CalWORKs regulations and policies that apply to developmentally-disabled individuals. If the disability significantly interferes with the person's ability to obtain employment, retain employment, or to participate in welfare-to-work activities, the county would advise and assist the participant and/or authorized representative to explore the possibility of applying for supplemental security income (SSI) program benefits, or of requesting an exemption from welfare-to-work requirements.

2. Comment:

"1) This definition is difficult for a layperson unfamiliar with Learning Disabilities to understand. We suggest instead using the definition proposed by the Learning Disabilities subcommittee of the Workforce Investment Board's Universal Access Workgroup. Using this definition would provide consistency among WTW providers, and be simpler to understand.

"'A lifelong neurological condition that affects the manner in which individuals receive, understand, process, retain/store, recall, and express information. A learning disability creates a 'gap' between one's ability and performance. Individuals with learning disabilities are generally of average to above-average intelligence.

"Individuals with learning disabilities may have marked difficulties on certain types of tasks while excelling in others. Learning disabilities may affect one's ability to read, write, listen, speak, work with numbers, problem solve, organize & prioritize information or tasks, and may affect how one gets along with others. Learning disabilities affect one or more aspects of an individual's development.

"With accommodations, individuals with learning disabilities can learn and become successful. Many people with learning disabilities develop personal strategies that allow them to compensate. If not accommodated, learning disabilities can negatively affect how people feel about themselves, limit their educational or vocational attainment, and impact their activities of daily living.'

"2) In particular, the definition should not include the last paragraph ('For the purposes of the CalWORKs Welfare-to-Work program, these disorders interfere with the

participant's ability to obtain or retain employment or to participate in welfare-to-work activities.') As drafted, this statement implies that CalWORKs has a separate definition of a Learning disability and/or affects the determination of when or whether a person has a learning disability. The regulations themselves address when the evaluation of LD will have an impact on WTW participation or plans. The paragraph is therefore inappropriate and unnecessary.

"The useful part of the objectionable sentence is the fact that Learning Disabilities can impact a person's ability to obtain or retain employment or to participate in welfare to work. The definition we propose, above, addresses that concern, and additionally and appropriately also refers to accommodations." (LSNC)

Response:

Please see response to Comment 1 regarding the definition of learning disability.

In response to the second part of this comment, which requests the deletion of the last paragraph of the definition that links it with the CalWORKs Welfare-to-Work program, the Department is not amending the section. As intended by the advisory workgroup, these sections regarding learning disabilities are to clearly connect the existence of a learning disability to a recipient's ability to participate in CalWORKs welfare-to-work activities or to obtain or retain employment, and if a learning disability exists, to provide the individual with the appropriate services and accommodations to ensure successful participation.

3. Comment:

"This first paragraph defines 'learning disabilities' and lists some ability areas that could be affected by learning disabilities. Our experience with Welfare to Work (hereafter 'WtW') staff indicates that they do not have a good grasp of what learning disabilities are and the implications of those disabilities. We suggest adding as follows to the list of affected abilities:

> "'.2(2) … manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, retention, understanding, organizational or mathematical abilities.'

"This second paragraph further defines 'learning disabilities'. We suggest text that will provide readers with a deeper understanding of what a learning disability is and clarify that learning disabilities are distinct from impairments such as mental retardation or simply low intelligence. We suggest:

> "'.2(2) … presumed to be due to central nervous system dysfunction. These are specific, not global, impairments and are distinct from intellectual disabilities. They occur in combination with otherwise average or above-average abilities in thinking and reasoning. Even though a learning disability …'

"Paragraph 3

"This paragraph should be stricken or moved to the section on accommodations.

"This paragraph implies that the CalWORKs Welfare-to-Work program has created a distinct definition of learning disabilities. It is important to discuss the impact that learning disabilities can have on the participant's ability to obtain or retain employment or to participate in welfare-to-work activities. However, that information should be conveyed without the implication that the CalWORKs definition of learning disabilities is somehow different from the standard and accepted definitions. This final paragraph suggests that in order for an evaluator to find a learning disability vis-à-vis welfare exists, s/he must find that the disability interferes with WtW activities. Essentially, DSS is suggesting a two-step definition that may well result in a finding of no disability when one exists. This concern is not theoretical.

"Our experience has demonstrated that this two-step definition of learning disabilities can result in a finding of no learning disability, denying actually disabled participants their right to accommodations. Our experience with the learning disability evaluations done by the Department of Public Social Services (hereafter 'DPSS') contractors suggests that the evaluators consider the impact on ability to obtain employment to be an essential part of the definition. One of our clients had previously been diagnosed by a community college as having a learning disability. Despite finding that she had severe cognitive delays, when the DPSS contractor evaluated her, he pointed to her ability to do waitressing jobs as evidence that she was not learning disabled!

"This conclusion suggests that the evaluator first considered whether she had a learning disability and then considered the impact of that disability on all potential employment. Since the evaluator found that the disability did not impact her ability to do menial jobs, he concluded that she was not learning disabled for purposes of receiving accommodations from DPSS. This two-tiered evaluation incorporates an analysis of impact on ability to be employed that is inappropriate and unnecessary for a diagnosis of a learning disability. The part of the definition dealing with the impact on employment may be appropriate to determine what accommodations, if any, are necessary, but should not be part of the definition used to determine if there are learning disabilities." (NSL LAC)

Response:

Please see responses to Comments 1 and 2.

Sections 42-722.12 and .14

4. Comment:

"1) These sections should clarify that the information regarding the screen must be provided even if this is *before* the formal offer of the screening, i.e. when providing info at the initial contact.

"2) The 'Script On Learning Disabilities Screening' attached to ACL 02-64 needs to be a mandatory form to ensure uniform and correct information. The staff providing information on the screening is not required to be trained on the screening (content of screen or screening process) or aware of learning disabilities issues. Without a specific, uniform form to convey the information, staff could inadvertently misdescribe the process or fail to provide needed information on why the screening is useful. Any needed county flexibility can be achieved through the alternate form review currently required for mandatory forms/substitute permitted process. This form should be referred to in the regulations.

"3) An additional section should be added stating that the worker must document the provision of information regarding learning disabilities at the pre-screening contact." (LSNC)

Response:

The Department is unclear as to what is meant by the first part of this comment, given that renumbered Section 42-722.12 requires that information about the screening must be provided at the first welfare-to-work contact, even if the formal offer of screening occurs after the first contact. However, the Department is amending renumbered Section 42-722.12 to provide additional clarification.

The Department agrees that information provided to individuals should be uniform, although it does not agree that counties should be required to use a standardized form. Rather than requiring a standardized form for consistency in what information counties must provide for individuals, Section 42-722.121 is being added to renumbered Section 42-722.12 and includes the minimum information that counties must provide to participants.

The Department is not adding an additional section requiring a county worker to document that learning disabilities information was provided to the participant. Section 42-722.13 already requires counties to provide the information, both verbally and in writing. Many counties will meet this requirement by providing the information in group settings. Such settings make it impractical to document the provision of materials to participants. However, to ensure that recipients receive adequate information, the Department is adding Section 42-722.121 to specify the information that counties must provide to participants.

Section 42-722.12

5. Comment:

"This section states that counties must provide 'information about the [learning disability] screening at the first welfare-to-work contact, including a description of the screening and the purpose and benefits of the screening." The regulations should indicate that counties should provide this information to participants in a standard form, by using a standard and mandatory script. We suggest using the "Script on Learning Disabilities Screening' attached to ACL 02-64. Use of this form will ensure that participants are provided with consistent and correct information and can be used by staff who are not trained on the screening or on learning disabilities issues. The regulation should also require the CWD to document in each participant's file how (oral, in writing, or both) and when the person was provided with this information. We suggest:

> "'.12 Counties that choose to offer a screening for learning disabilities later than the first welfare-to-work contact must still use the Script on Learning Disabilities Screening to provide information about the screening at the welfare-to-work contact~~, including a description of the screening and the purpose and benefits of the screening~~. The county shall document in each participant's file how (oral, in writing, or both) and when the participant was provided with this information.'" (NLS LAC)

Response:

Please see responses to Comment 4, second and third paragraphs.

Section 42-722.13

6. Comment:

"*Counties must offer a screening for learning disabilities. If the participant is not in the office the information may be provided verbally by telephone or in writing.*

"We recommend this change since there are participants that are difficult to bring into the office, such as sanctioned participants and/or working participants. These participants may not respond to an appointment letter or a telephone call. In these instances, it is very problematic to provide the infonnation about screening verbally to these participants." (LA DPSS)

Response:

The Department is not amending this section in response to this comment. Under this section, counties have the discretion to adopt specific procedures for offering a learning disabilities screening to participants, both verbally and, not or, in writing.

Contacting an individual by telephone may be one method to provide information verbally.

Section 42-722.14

7. Comment:

"This section states that recipients agreeing to LD screening must be screened **before they are assigned to another welfare-to-work activity**.

"This has a negative impact on participants, as it suspends Welfare-to-Work services pending the results of the LD Screening. Furthermore, for participants who have already signed a Welfare-to-Work Plan, the 18/24-month and 60-month CalWORKs clocks continue to tick, while participants are not receiving services.

"This also has a negative impact on Welfare-to-Work participation rates, since participants have a high no show rate to screening and evaluation appointments. The consequences may be detrimental to California, especially if TANF participation rate requirements are increased with TANF reauthorization.

"Only 34% of participants who have been screened through July 31, 2003 in San Diego have scored positive for potential LD. This low rate does not support postponement of participation in Welfare-to-Work, pending LD Screening.

"San Diego recommends that Welfare-to-Work participants continue to participate in Welfare-to-Work activities, pending completion of LD Screening. If participants need to take time off from the regularly scheduled Welfare-to-Work activities to complete the screening, the CWD should give them good cause for not participating in the activity to complete the screening." (SD HHSA)

Response:

The Department does not agree with the comment that screening prior to the assignment to another welfare-to-work activity has a negative impact on the participant. Counties should make referrals to activities based on the most complete information available. The screening serves as a tool to obtain pertinent information. This section also assists in minimizing a county's need to provide retroactive time to a portion of an individual's 18- or 24-month time clock. If the individual was referred to their next activity without screening after requesting or agreeing to one, and were later determined to have a learning disability, the county would have to give back participation time if the activity was shown to be inappropriate.

In response to the recommendation in the last part of the comment, Section 42-722.14 is being amended by adding Section 42-722.141 to ensure that participants in welfare-to-work activities are granted good cause to attend a learning disabilities screening.

8. Comment:

"1) This language should be changed, as follows: 'Participants who request or agree to a learning disabilities screening at any stage of welfare to work, including the first contact, must be screened by the county before they are assigned to another welfare-to-work assignment or activity.'

"First, the section must address the applicability of this non-assignment rule at any stage of CalWORKs. Second, within CalWORKs, 'WTW activity' is commonly used to refer to post-plan activities, and not pre-plan assignments. It is important to clarify the sentence to indicate that the pre-plan assignments are included.

"2) A subpart or additional section should be added that indicates the effect of the screening upon participation in existing assignments/already assigned activities, by either stating that participation in the screening is good cause for not participating in the existing assignment/activity, or cross-referring to the good cause section." (LSNC)

Response:

The Department agrees with the comment that a participant can request a screening at any stage of welfare-to-work. Section 42-722.14 does not restrict when an individual makes his/her request.

The Department is not adding the word "assignment" to the section since it is unnecessary to make a distinction between "assignment" and "activities" given that existing Section 42-711.5 already refers to both pre-assessment and pre-plan assignments as "activities."

In response to the comment regarding amending the section to grant good cause to attend a screening when participating in an activity, please see response to Comment 7.

9. Comment:

"This section provides that participants who will undergo a screening must be screened before they are assigned to a future activity. The regulation must also apply to assignments since many activities take place before assessment. This section should also indicate the effect of the screening agreement on the participant's participation in current, not future, WtW activities. It should provide that a participant in the screening has good cause for not participating in the current activity. We suggest:

"'.14 Participants who request or agree to learning disabilities screening at any stage of welfare to work, including the first contact, must be screened by the county before they are assigned to another welfare-to-work assignment or activity. Individuals who participate in the screening shall have good cause for not participating in the current activity/assignment until the screening is complete.'" (NLS LAC)

Response:

Please see responses to Comments 7 and 8.

Section 42-722.15

10. Comment:

"Change the language, as follows: 'Counties must offer current CalWORKs welfare-to-work participants, who were not previously offered a learning disabilities screening under Section MPP § 42-722.11, the opportunity to be screened ~~by September 3, 2003, or the first~~ at any time one of the following events occur~~, whichever is earlier~~:'

"Pursuant to ACL 02-35, *all counties* were to have implemented the LD protocols by the *extended* date of September 3, 2002, not 2003. Counties that have not implemented these protocols by now are in violation of the state instructions. The regulations should not be used to grandfather these counties into compliance or to extend the compliance date. Counties that have failed to implement the protocols should be held accountable for the failure to evaluate and accommodate applicants and recipients, and correct any loss of benefits, time and training opportunities." (LSNC)

Response:

The Department agrees that the date by which counties were to offer learning disabilities screening to all CalWORKs recipients has past, therefore, this section is being deleted. Additionally, because of the deletion of Section 42-722.15, Sections 42-722.151 through .153 pertaining to offering a learning disabilities screening when participants are: suspected of having a learning disability by the county, welfare-to-work contractor or participant; failing to maintain satisfactory progress in assigned welfare-to-work activities or employment; or in good cause determination process, compliance process, or sanction process are no longer applicable and are being deleted.

Section 42-722.152

11. Comment:

"1) This section should be clarified to indicate that the sanction process includes the cure process (i.e. the screening should be offered orally and in writing when providing information to sanctioned individuals re: how to stop the sanction; when the county or recipient has contact regarding curing the sanction; during cure plan development and implementation, etc.)

"2) The order of MPP § 42-722.152 and .153 should be inverted, as that's the logical progression within WTW." (LSNC)

Response:

Please see response to Comment 10.

Section 42-722.153

12. Comment:

"This section should include a failure to benefit from an activity, short of the sanctionable 'failure to make satisfactory progress.' The purpose of the screening is to detect, as soon as possible, any unaccommodated Learning Disability. The failure to benefit from the assignment is a basis for adjusting the training time, so should be included here, too, as follows: 'Individuals are failing to maintain satisfactory progress in or benefit from their assigned welfare-to-work activities, including employment.'" (LSNC)

Response:

Please see response to Comment 10.

Section 42-722.16 et seq. (Renumbered to Section 42-722.15.)

13. Comment:

"The provisions addressing the screening process for limited-English proficient participants are vague and inconsistent when compared to the provisions for non-LEP participants. Sections 42-722.16, .161, and .162 regarding limited-English proficient (LEP) CalWORKs welfare-to-work participants for whom no recognized and validated learning disabilities screening tools exist, will likely result in a disparity of benefits to LEP individuals. The proposed regulations state 'the county must determine whether a learning disability exists through discussion with, and/or observations of, the [LEP] participants.' This standard is problematic. If the county is able to get an interpreter to communicate with the participant, why can't a proper screening be conducted in the participant's language? If there is no verbal communication, what must the county observe in order to determine the individual has a learning disability? Is it even possible, according to professional standards, to recognize a learning disability without communicating with the individual, and by mere observation? The regulations do not specify who at the county level would be responsible for making such a critical determination and what guidelines must be followed. There should be some credentials for the individual(s) who will make this decision as there are for non-LEP individuals in proposed section 42-722.4. The fear is that LEP participants will be denied assistance, and, in a worst-case scenario, be sanctioned for failing to comply with a welfare-to-work plan, because a proper determination of the existence of a learning disability is not made by the county." (CAI)

Response:

At this time, a recognized and validated learning disabilities screening tool in languages other than English does not exist. Therefore, the regulations pertaining to the screening of limited-English proficient were developed to assist counties in making the best determination possible given this limitation. As a part of this guidance, the Department is also adding Section 42-722.151 to renumbered Section 42-722.15, which expands the examples of methods to use to determine if a limited-English proficient participant has a potential learning disability.

In response to the portion of the comment regarding the use of bilingual and bicultural staff, the Department is adding Section 42-722.33 to renumbered Section 42-722.3 to clarify that counties must use bilingual and bicultural staff when determining a potential learning disability, if no recognized and validated screening tool exists in the participants primary language.

The lack of screening and evaluation tools for limited-English proficient individuals is an issue for many programs (i.e., other educational, vocational, and workforce development programs). The U.S. Department of Education realizes this is an issue and is working with states to develop screening tools for low-income individuals who are non-English.

14. Comment:

"Requires that CWDs determine whether Limited English Proficient (LEP) individuals '**have a learning disability**, through discussions with, and/or observations of, the participants.'

"CWDs do not have the education, training, professional specialization to determine whether or not participants have LD. Discussions and observations may provide indications of potential LD, but are not sufficient to make conclusive determinations.

"Furthermore, even highly educated, trained, and experienced LD professionals cannot conclusively determine whether or not LEP participants have LD. According to San Diego LD testing provider, Foster Assessment Center & Testing Service, Inc., 'currently manufactured test instruments do not accurately identify academic achievement in all languages and, therefore, cannot accurately determine if a learning disability exists. Even such tests as the Bilingual Verbal Ability Test (BVAT) do not determine math levels. In order to identify a learning disability, all academic areas (minimum of reading, math, spelling) need to be reviewed.'

"San Diego recommends the following language for this section:

"'This section is being adopted to specify that, for limited-English proficient CalWORKs welfare-to-work participants for whom no validated screening tool exists, counties must determine whether the participants have a ***potential*** learning disability through discussions with, and/or observations of, the participants. If a ***potential***

learning disability exists, counties must refer limited English Welfare-to-Work participants to a **Vocational Evaluation**.'

"San Diego County recommends that the Vocational Evaluation focus on areas for which there are validated testing instruments available in the participant's primary language." (SD HHSA)

Response:

The Department is amending this section to clarify that discussions with, and/or observations of, the participants are to determine whether a potential learning disability exists. Also, in recognition of the difficulty in determining if a limited-English proficient individual has a potential learning disability, the Department is adding Section 42-722.414 to renumbered Section 42-722.4, which allows limited-English proficient individuals who request an evaluation to bypass screening and go to the evaluation.

The Department also recognizes that currently, learning disabilities evaluation tests do not exist in all languages and do not cover all the academic areas. However, the Department does not agree with the comment that limited-English proficient individuals who are suspected of having a learning disability be only sent to a vocational evaluation. Counties are expected to examine as many areas as possible, and to determine if a limited-English proficient participant has a learning disability, to the best of the staff's ability, pursuant to renumbered Section 42-722.465.

15. Comment:

"1) The following clarification is necessary to ensure that untrained county workers do not attempt to make a LD determination. 'For limited-English proficient CalWORKs welfare-to-work participants, for whom no recognized and validated learning disabilities screening tools exist, as required by Section MPP § 42-722.MPP § 42, the county must have a learning disability professional determine whether a learning disability may exist through discussions with, and/or observations of, the participants.'

"The CWDs already have an existing obligation, under MPP §42-711.58 to refer individuals with suspected learning disabilities to an evaluation. English speakers, and others who speak languages in which validated tools exist, are able to get a screening for learning disabilities. Access to a screening process is crucial, as many individuals are unaware they have a LD, and untrained workers are unable to correctly identify the potential existence of a LD to the degree that a screening can. LEP individuals, to have equal access to the CalWORKs program and services, should also have an opportunity to have an appropriate LD screening. This is more than having untrained staff talk with or observe participants, particularly as learning issues may be masked or more difficult to detect because of language and cultural differences. LD issues and their consequences are very often misperceived as lack of motivation, refusal to cooperate, etc.

"2) This section should state that the evaluation for LEP individuals should comply with Division 21, in that the evaluator must be able to effectively communicate with the recipient, either as a bilingual individual or with a qualified interpreter." (LSNC)

Response:

In response to the first part of the comment, the Department agrees that screeners are not to make a determination as to whether or not a learning disability exists, but rather, whether a potential learning disability may exist, and is amending this section for clarification. However, the Department is not amending this section to require that counties have a learning disabilities professional conduct the screening. Renumbered Section 42-722.3 already requires counties to select qualified people to do the screening, and for clarity Section 42-722.33 is added to require counties to use bilingual/bicultural when necessary, and Section 42-722.414 is added to renumbered Section 42-722.4 to require limited-English proficient individuals who request an evaluation be sent to the evaluation, and bypass screening.

In response to part two of the comment, the Department is not amending this section to reference Division 21, as it is understood that Division 21 applies to all CalWORKs regulations.

16. Comment:

"This section sets out the procedure for determining whether limited English proficient (LEP) participants have learning disabilities. It indicates that for LEP participants 'for whom no recognized and validated learning disabilities screening tools exist . . . the county must determine whether a learning disability may exist through discussion with, and/or observations of, the participants.' ACL 01-70, dated October 17, 2001, describes the required procedure for LEP participants. It indicates that 'counties must provide access to comparable learning disability screening and evaluation services for the LEP' participants.

"The procedure outlined in the proposed regulations does not conform to the requirements in ACL 01-70. Determining whether LEP participants may suffer from learning disabilities through unspecified discussions and observations is an insufficient process. It is in no way a learning disability screening that is comparable to that provided to non-LEP participants.

"If screening of LEP participants is to be done solely through discussion and observation, additional guidelines are required. The regulations should be clear that the discussion and observation should be done by bilingual workers who are experienced and trained in learning disabilities evaluations. If such workers do not exist within the CWD, then screening needs to be done by a competent bilingual learning disability evaluator. We suggest the proposed regulation be modified as follows:

> "'.16 For limited-English proficient CalWORKs welfare-to-work participants, for whom no recognized and validated learning disabilities

screening tools exist, as required by Section MPP § 42-722.42, the county must use an alternative process such as referring an LEP participant to a qualified bilingual learning disability professional to determine whether a learning disability may exist through discussions with, and/or observations of, the participants.'" (NLS LAC)

Response:

Please see responses to Comments 13, 14, and 15.

Section 42-722.162 (Renumbered to Section 42-722.153.)

17. Comment:

"Concern: If a participant is non-English speaking, currently manufactured test instruments do not accurately identify academic achievement in all languages, and therefore cannot accurately determine if a learning disability exists. Even such tests as the Bilingual Verbal Ability Test (BVAT) does not determine math levels. In order to identify a learning disability, all academic areas (minimum of reading, math, spelling) need to be reviewed. For example, mathematical symbols for many languages differ, and therefore testing is difficult unless normed, validated tests are available.

"However, in order to accommodate non-English speaking participants, many may benefit from a formal three day vocational evaluation, similar to that provided to the Department of Rehabilitation. Two days are generally necessary when evaluating the English speaking learning disabled population. Non English speakers are significantly more difficult and generally require hands-on work sample evaluation in addition to individualized observation and discussion, thus a three day recommendation. These evaluations (utilizing objective assessment instruments) would identify employment strengths and barriers (academics, aptitudes, cognitive ability, hands-on capabilities, interests, etc.) in order to assist the Case Manager and participant with determination of employment goals and employment plan recommendations.

"Recommendation: Change the phrasing to state:

"'If the county determines that a limited-English proficient CalWORKs welfare-to-work participant may have a potential learning disability, the county must refer the participant to a learning disabilities or a three day objective vocational evaluation in accordance with Section 42-722.5.'" (FACTS)

Response:

Please see response to Comment 14, second paragraph.

Section 42-722.2

18. Comment:

"This is a fairly minor and easily-implemented suggestion regarding section 42-722.2, which allows the county to offer certain information to participants to put them at ease about the learning disabilities screening and evaluation process. This information should be mandatory, and should be provided to every person who is offered the screening and evaluation process. Welfare-to-work participants may be concerned about being 'labeled' within the system, or may not understand what the process entails. This short and simple explanation will likely benefit all participants going through the process and assist them in making a decision. Since the county must already provide notice about learning disabilities, it makes sense to offer this information as well." (CAI)

Response:

Please see responses to Comment 4, second paragraph, and Comment 20.

19. Comment:

"1) This should not be in a handbook section. As indicated in our comments above [Comment 4], counties need to provide this information, and the information provided should be complete, simple and uniform throughout the counties. This is not an area appropriate for county discretion. The screening will not be an effective tool if people don't know what it is/what it involves/why they should be screened.

"2) Additionally, the information in the draft regulation should be split up. One portion of the information must be provided at the description (and offer) of screening. This information is currently in the 'Script' attached to ACL 02-64. An entirely different explanation of what the *evaluation* involves should be provided to those who meet the criteria for a referral to an evaluation. It is absolutely inappropriate to describe the areas of evaluative testing when discussing the screening! We recommend that the staff describe the qualifications of the tester, the length of the testing, and available accommodations only. The evaluator is the best person to address questions about the content of the testing, and allay any concerns the participant might have. In the alternative, a brief description of the evaluation process can be given to those with a positive score on the screen and/or who request referral to evaluation." (LSNC)

Response:

Please see response to Comment 18, regarding first part of this comment.

The Department does not agree with the comment that the information provided to the participant should be divided into two parts, screening and evaluation, to be provided by the county and evaluator, respectively. This section is not being amended because

it was based on the protocols developed by the Department's Advisory Workgroup on Learning Disabilities to ensure that the participant be provided with enough information pertaining to both the learning disabilities screening and evaluation process so that he or she can make an informed decision about accepting or waiving the screening and/or evaluation.

Section 42-722.21

20. Comment:

"This section describes the information that should be provided to the participant about the learning disabilities screening and evaluation. It suggests that participants be provided with an explanation regarding 'the indicators/facts of a learning disability (e.g., the difference between learning disabilities and mental retardation)'. Because learning disabilities are widely misunderstood, many people consider them to be equivalent with general low intelligence. Participants should be offered an explanation of how learning disabilities are deficits in specific processing areas, occurring in combination with otherwise average or above-average abilities in thinking and reasoning. We suggest:

> "'.21 The indicators/facts of a learning disability (e.g., the difference between learning disabilities and mental retardation and the difference between learning disabilities and overall low intelligence.)'

"Furthermore, this section should not be a handbook section. The information in this section is necessary information. The provision of this information is not discretionary—the county must offer it to participants. The mandatory nature of providing this information should be clarified." (NLS LAC)

Response:

The Department is deleting Section 42-722.2 and therefore is not amending any renumbered section to include this comment. The Department is addressing this comment by adding Section 42-722.121 to Section 42-722.12, to specify information that counties must provide participants. Section 42-722.121 informs participants that most people with learning disabilities are intelligent and many are gifted, and that individuals with learning disabilities may have difficulty reading, listening, writing, etc., but can be taught to use their strengths and find ways to make it easier to learn and be more successful at school and on the job.

Section 42-722.22

21. Comment:

"This section indicates that the county should provide participants with information about both the screening and more extensive evaluation for learning disabilities. We suggest that the information about evaluations not be provided to all participants but

only to those who are referred for an evaluation. Furthermore, WtW staff should provide only very basic information on the evaluation to help allay any fears. The evaluators themselves should be required to give participants a more detailed overview prior to the testing." (NLS LAC)

Response:

Please see response to Comment 19.

Additionally, the Department is not amending this section in response to the comment that the evaluators be required to give participants a more detailed overview prior to testing. Our regulations require that counties use trained, qualified, evaluation professionals and believe that they understand how to best inform participants about, and conduct, the evaluation.

The Department also is not amending the section to require that welfare-to-work staff only provide basic information, given that such an amendment is unnecessary. The Department is adding Section 42-722.121, which only requires that the county provide minimal information regarding the screening and evaluation. However, counties should not be precluded from providing additional information if requested by an individual.

Sections 42-722.3 and .31 et seq. (Renumbered to Sections 42-722.2 and .21 et seq.)

22. Comment:

"This section instructs counties to take specific action when a participant declines screening.

"San Diego supports CDSS' proposal to add the following requirement: 'document a refusal to sign a waiver, which is equivalent to a signed waiver in the participant's files.' (SD HHSA)

Response:

It is not necessary for the Department to respond to this comment, given that the commenter is supportive of the section as drafted by the Department.

Section 42-722.311 (Renumbered to Section 42-722.211.)

23. Comment:

"1) This section needs to clarify when the county should ask a participant to sign the waiver. There is no regulation that indicates what to do when there is good cause refusal to take the screening. Some recipients refuse the screening because they already have an LD evaluation or diagnosis, and have provided that information to the CWD, or wish to defer the screening while they undergo evaluation and testing for

other issues, particularly ones that impact the ability of an evaluator to determine LD (such as substance abuse, ADD, ADHD, mental health and some physical conditions). The CWD must accommodate KNOWN disabilities, and cannot ask or require recipients to waive this right just because they decline a screening.

"The regulations should state the process for referring individuals directly to a LD screening, such as if they believe they are likely to have LD (on the basis of Special Education, past evaluation, etc.)

"The regulations should make it clear that the purpose of the waiver is to inform participants that the county cannot accommodate UNKNOWN Learning Disabilities, and the consequences of not identifying potential LD. (This can be done by modifying .313, as indicated below [Comment 26].)

"2) This section needs clarification of when the waiver ends, as well as modification of the existing form. The waiver no longer applies, and the individual can get accommodations, whether in WTW activities or for other participation requirements, once an evaluation confirms LD. This section, as well as the form, however, states that nothing changes after the evaluation *until* the person signs a modified or new WTW plan. The section should be written as follows: 'Inform the participant that his/her welfare-to-work activities and participation will not include any accommodations for a learning disability until a Learning Disability is identified; and …' (Our comments to the form are indicated at the end of this document. [Comment 103])" (LSNC)

Response:

While the Department disagrees with the use of the term "good cause" in the context of refusing a screening, it does agree with the comment that the individual may have concurrent issues/problems that need evaluation. In response to this matter, the Department is adding a new Section 42-722.16 to provide guidance to counties regarding the priority of referral when participants may face health, behavioral health, and suspected learning disability problems, concurrently.

In regards to past learning disabilities evaluation, a new Section 42-722.24 is being added to renumbered Section 42-722.2 to inform counties of their options when an individual presents previous learning disabilities evaluation results. Also, renumbered Section 42-722.412 clearly states that participants previously identified as having learning problems (e.g. attended Special Education classes) are to be referred directly to a learning disabilities evaluation.

The comment also states that this section needs to clarify when the waiver ends. The Department is not amending renumbered Section 42-722.211, given that the ending of the waiver depends on the individual. Renumbered Section 42-722.23 states that if an individual declines a screening/evaluation and requests one at a later date, the county must accommodate the request as soon as administratively possible.

24. Comment:

"This section should be revised to reflect the fact that accommodations can be provided not only for participation in welfare-to-work activities, but also for participation with general program requirements.

"Also, if a participant is at some point identified as having a learning disability, the CWD is then required to accommodate that disability regardless of a previous refusal to undergo a screening or evaluation for a learning disability. Therefore, we suggest the following language:

> "'.311 Inform the participant that his/her compliance with program requirements and welfare-to-work activities will not include any accommodations for a learning disability until a learning disability is identified.'" (NLS LAC)

Response:

The Department is not amending this section in response to the part of the comment proposing the requirement that accommodations be provided not only for participation in welfare-to-work activities, but also for participation with general program requirements. This part of the comment is outside the scope of this regulations package.

The Department does not believe that it is necessary to amend this section with the proposed language that the participant's welfare-to work activities and participation will not include any accommodations for a learning disability until a learning disability is identified. Renumbered Sections 42-722.23 and .231 clarify that should the participant at a later time request a learning disabilities evaluation and is determined to have a learning disability, he/she will be provided with the appropriate services and accommodations to address the learning disability on a prospective basis only.

Section 42-722.312 (Renumbered to Section 42-722.212.)

25. Comment:

"The sentence needs clarification to indicate how and when the recipient can get a future screening, as follows: 'Inform the participant that he/she may ask for a learning disabilities screening and/or evaluation upon request at a later time, at any point in the WTW program. …'" (LSNC and NLS LAC)

Response:

The Department is amending the renumbered Section 42-722.212 to clarify that the county must inform participants that they may receive a learning disabilities screening and /or evaluation upon request at any later time.

Section 42-722.313 (Renumbered to Section 42-722.213.)

26. Comment:

"1) This section must specify how the waiver is reviewed with the recipient, as follows: 'Review the waiver, orally and in writing, of the learning disabilities screening and/or evaluation with the participant and have the participant sign the waiver.' Many individuals with LD have difficulty comprehending and/or processing written materials, and need a verbal review.

"2) Add an additional subsection, renumbering current (a) to (b), which provides for the process of reviewing whether the individual has good cause for not being screened:

> "(a) The worker shall review with the individual whether there is any good cause reason for declining the screening and/or evaluation for LD. These shall include, but are not limited to: seeking exemption verification; seeking evaluation for other conditions, the individual suspects LD and wishes to go straight to evaluation, the existence of prior LD evaluations. If good cause exists, the worker shall not have the recipient sign the waiver." (LSNC)

Response:

The Department agrees with the first part of the comment and is amending this section to clarify that the county is to read and discuss the waiver with the participant.

Please see response to Comment 23 in regard to the second part of the comment.

27. Comment:

"**A. Notice should be provided orally and in writing**

"This section should be modified to indicate that the waiver of the learning disabilities screening and/or evaluation should be reviewed with the participant both orally and in writing. We agree with Ms. Berger's proposed [Comment 26] text:

> "'.313 Review the waiver of the learning disabilities screening and/or evaluation with the participant both orally and in writing and have the participant sign the waiver.'

"**B. A waiver should not be required when a participant is referred directly to an evaluation**

"Additionally, a participant who wants to bypass the screening stage and proceed directly to the evaluation should not be required to sign a waiver of the screening. We suggest a new section be added:

"'.313(b) A participant need not sign a waiver of the learning disabilities screening if s/he is being referred directly to a learning disabilities evaluation.'

"**C. DSS should adopt language regarding good cause for declining a screening**

"We suggest adding a subsection that provides for the process of reviewing whether the individual has good cause for not being screened. A worker should review with the participant whether any good cause reasons exist for declining the screening and/or evaluation for learning disabilities. The primary example of good cause should be the existence of prior evaluations for learning disabilities.

"While we recognize that the statute and regulations require a referral when there is a suspected disorder, we believe DSS has the discretion to accept a recent competent learning disabilities evaluation in lieu of a new duplicative evaluation. When there is a recent evaluation that establishes the existence of a learning disorder, a new referral would be a waste of time and money. Furthermore, it acts as a barrier for many with learning disabilities. For these learning disabled participants who have had difficulties in school, testing is often seen as a frightening task that induces great anxiety and undergoing a second evaluation is a significant hardship. At the very least, the regulations should provide that when a new referral is made the evaluator should accept the pre-existing evaluation (if competently done) and limit their inquiry to determining what modifications and accommodations are necessary to the WtW plan. We suggest:

"'.313(b) The worker shall review with the individual whether there is any good cause reason for declining the screening and/or evaluation for learning disabilities. These shall include, but are not limited to the existence of a prior learning disability evaluation.'" (NLS LAC)

Response:

Please see response to Comment 26, first paragraph, regarding reviewing the waiver with the participant, both orally and in writing.

Please see response to Comment 23 regarding bypassing the screening and going directly to the evaluation and good cause for declining the screening.

Section 42-722.32 (Renumbered to Section 42-722.22.)

28. Comment:

"The refusal to be screened or evaluated cannot be a factor *in any way* in sanctioning a recipient. The regulations therefore should read: 'The county must not sanction a participant ~~solely~~ on the basis of his/her refusal to be screened and/or evaluated for learning disabilities. The screening and evaluation are offered for the benefit of the

recipient, and although counties must make them available to recipients, individual participation in them is not a program requirement.'" (LSNC)

Response:

The Department agrees that a refusal to be screened or evaluated cannot be a factor in sanctioning a recipient and is amending this section to delete the words "solely on the basis" and inserting "because" in their place.

The Department is not amending this section to include the language proposing that the screening and evaluation are offered for the benefit of the recipient, and although counties must make them available to recipients, individual participation in them is not a program requirement. Sections 42-722.11 and.12 clearly require counties to *offer*, and make available learning disabilities screening and evaluation to the participant. Additionally, nowhere in this regulations package does it state that the screening and evaluation are program requirements.

29. Comment:

"This section provides that the 'county must not sanction a participant solely on the basis of his/her refusal to be screened and/or evaluated for learning disabilities (emphasis added).' This phrasing suggests that the CWD may sanction participants in part for refusing to be screened and/or evaluated for learning disabilities. This is not correct. A participant has the right to refuse learning disability services. The screening and evaluation for learning disabilities are offered for the benefit of the participant. The county may not penalize a participant at all for refusing to be screened and/or evaluated. We support Ms. Berger's [Comment 28] proposed text:

> "'.32 The county must not sanction a participant ~~solely~~ on the basis of his/her refusal to be screened and/or evaluated for learning disabilities. The screening and evaluation are offered for the benefit of the recipient. Although counties must make these services available to recipients, participation in them is not a program requirement.'" (NLS LAC)

Response:

Please see response to Comment 28.

Section 42-722.321 (Renumbered to Section 42-722.221.)

30. Comment:

"1) This section should be clarified to distinguish between a failure to be screened and a refusal, as indicated in our comments to section .311 [Comment 23]. This section should be rewritten as follows: 'Should a participant decline, without good cause (see Section 42-722.311) to be screened or evaluated….'

"2) The section (and waiver form) must be changed to correctly describe the waiver. It makes no sense to state that the recipient is waiving the right to a good cause finding. If participants fail to make satisfactory progress, or are in the good cause process, they can ask for the screening/get evaluated. If the evaluation finds the participant has a LD, the evaluator must determine if the LD was the basis for or contributed to the failure. If so, the county must find good cause.

"By not taking the screen earlier, recipients later will not have a remedy for an unaccommodated disability, as the county only need accommodate known disabilities. A waiver reasonable can include an acknowledgment that the remedy will not be available, and that the WTW plan may not be appropriate or timely completed. But, the county cannot ask or require a recipient to waive the county's obligation to reasonably accommodate the disability. The county also cannot sanction the recipient for an inability to make satisfactory progress or otherwise participate in the WTW assignments, activities, and programs when that inability is attributable to the disability. Indeed, recipients who were initially resistant to a screening may be convinced of the need only when they are not able to meet the WTW requirements.

"The language should therefore be changed as follows:

> "'…and subsequently refuse or fail to comply with program requirements, or to make satisfactory progress in his/her assigned activity, the participant shall <u>not be eligible for the adjustment of time set forth in Section 42-722.92, for any period in which LD was not detected, unless a LD specialist confirms a LD and that it contributed to the individual declining the screening or evaluation. The individual shall be informed that without evaluation for a potential LD, s/he risks performance problems that may lead to a sanction. The individual shall be informed of his or her right to request a LD screen if not complying with program requirements, failing to make satisfactory progress or benefit from a WTW assignment or activity, or if in a compliance/sanction process. If the evaluation confirms LD and that it contributed to the failure, the individual will</u> ~~not~~ have good cause ~~on the basis of being learning disabled~~ for failing to comply with program requirements or make satisfactory progress, and shall <u>not</u> be subject to the compliance and sanction requirements in accordance with Sections 42-721.2 and 42-721.4, respectively." (LSNC)

<u>Response:</u>

Please see response to Comment 23 in response to part one of the comment.

In regard to the second part of the comment, the Department is amending renumbered Section 42-722.221 to clarify that should the participant decline to be screened or evaluated, and subsequently not comply with program requirements, the participant shall not have good cause on the basis of being learning disabled unless he/she is determined to have a learning disability.

31. Comment:

"This section reflects a misunderstanding of the county's responsibility to disabled participants. The county is required to accommodate all known disabilities. When a participant refuses to participate in a screening or evaluation, she is effectively waiving her right to make her disability known to the CWD. However, the participant cannot waive the CWD's responsibility to accommodate her disability when it does become known at a later time. This means that a participant should have good cause, based on her learning disability, for failing to comply with program requirements or making satisfactory progress, and shall receive accommodations to program requirements when her disability becomes known to the county, regardless of any previous refusals to be screened and/or evaluated. This section needs to be modified.

"In addition, this section ignores the possibility that a participant could be screened or evaluated for a learning disability at the time a sanction is imposed. If the evaluator determines that the participant has a learning disability and that learning disability was the basis for or contributed to the failure, then the county must find good cause. Thus, a participant can have good cause for noncompliance because of a learning disability even if she previously declined to be screened or evaluated. This possibility is not farfetched, as participants who initially refused to participate in a screening or evaluation might be convinced of the need to be evaluated only when they incur a sanction. We agree with Ms. Berger's [Comment 30] proposed language:

> "'.321 Should a participant decline without good cause, as defined in 42-722.313, to be screened or evaluated and subsequently refuse or fail to comply with program requirements or to make satisfactory progress in his/her assigned activity, the participant shall not be eligible for the remedies set forth in Section 42-722.92, for any period in which a learning disability was not identified, unless a learning disability specialist confirms the existence of a learning disability and that the learning disability contributed to the individual declining the screening or evaluation. The individual shall be informed that without evaluation for a potential learning disability, s/he risks problems complying with program requirements and may incur a sanction. The individual shall be informed of their right to request a learning disabilities screening if s/he is not complying with program requirements or is failing to make satisfactory progress, or if they enter a compliance/sanction process. If the evaluation confirms the existence of a learning disability and that it contributed to the failure, the individual will ~~not~~ have good ~~cause on the basis of being learning disabled~~ for failing to comply with program requirements or make satisfactory progress, and shall not be subject to the compliance and sanction requirements in accordance with Sections 42-721.2 and 42.721.4, respectively.'" (NLS LAC)

Response:

Please see response to Comment 30, second paragraph.

Section 42-722.33 (Renumbered to Section 42-722.23.)

32. Comment:

"Proposed section 42- 722.33 states that if a participant declines a learning disabilities screening and/or evaluation, but later makes a request to go forward with the process, that 'the county must provide the screening and evaluation as soon as administratively possible.' This time standard is extremely broad and vague, and could result in inconsistent county determinations regarding when a participant must be provided these services. Additional language should be inserted to clarify what a reasonable time frame would be under the circumstances. For instance, language mirroring proposed section 42-722.1 might be appropriate. Since most of the participants who request a screening at a later time are likely either being sanctioned or are failing to meet their plan requirements and in jeopardy of being sanctioned, it would seem the counties should provide this service as quickly as they are required to do under the initial offering of the screening process. In addition, the referral process for an evaluation, as opposed to the screening process, states that the evaluation must be performed ''as soon as administratively possible,' instead of providing an actual time frame for the county to complete the evaluation. The proposed regulations impose deadlines for participants to be screened or notified of their right to be screened, but then do not provide any time frame for the actual assessment to be completed, which is inconsistent. The more crucial issue is what happens to these participants during the time period before they are evaluated and determined to have a learning disability: can they be sanctioned retroactively for failing to comply with their existing plan if they are later determined not to have a learning disability?" (CAI)

Response:

The Department is not amending this section to establish time frames by which the participant should be evaluated because the learning disabilities evaluators are not equally available in all counties. Therefore, the waiting time for evaluations will vary from county to county.

In response to the question about what happens to a participant who previously declines screening and evaluation, requests a screening/evaluation later, and prior to the evaluation, fails to comply with program requirements and is sanctioned, the sanction would be rescinded if it was determined that the learning disability was the cause of the noncompliance. The participant would be accommodated from the point that the learning disability was identified.

33. Comment:

"This section should be clarified to indicate that recipients can request a screening any time after the initial offer, as follows: 'Should the participant decline the learning disabilities screening and/or evaluation as described in Section MPP § 42-722.31, and request a learning disabilities screening and/or evaluation at any later time, the county

must provide the screening and evaluation as soon as administratively possible.'" (LSNC)

Response:

Please see response to Comment 25.

Section 42-722.331 (Renumbered to Section 42-722.231.)

34. Comment:

"1) This section must be modified to reflect the requirements of Welfare and Institutions Code § 11325.25(a). This section requires that the first component of the learning disability (or other medical) evaluation is "to determine whether the individual is unable to successfully complete or benefit from a current or proposed program assignment." The regulation therefore should be changed to read: 'If the evaluation identifies the existence of a learning disability, and the evaluator determines the individual can participate in WTW, the welfare-to work assignment will be modified to provide appropriate services and accommodations to address the learning disability on a prospective basis only.'

"2) Add a subsection, which would precede the current .331, to explain the process to be followed if the evaluator concludes that the individual cannot participate, as follows: 'If the evaluator determines that the individual's learning disabilities are such that the individual should be exempt from WTW, the exemption will commence from the onset of the impairment. The individual shall be advised of the right to volunteer for WTW services, and that accommodations will be provided, on a prospective basis, for the volunteer activities.'" (LSNC)

"3) Add a subsection to explain what information must be provided to the evaluator so the evaluator can determine what 'WTW participation' involves, for purposes of exemption and accommodation, involves, as follows: 'The CWD shall inform the evaluator of the employment assessment information (if known), the WTW requirement of 32-35 hours/week of participation, the disability exemption criteria, the requirement that disabled exempt individuals seek treatment, the ability of individuals exempt from participation to volunteer for WTW activities, and the WTW activity and 60-month time limits.'

"4) Add a section to list the prohibition on discrimination, and the fact that individuals with disabilities have the right to access equally and meaningfully the range of activities, programs and services offered by the WTW program based upon an individualized assessment of their employment needs. The relevant language, in part, is contained in ACL 01-42, which states that HHS-OCR found:

> "The county is responsible for identifying disabled beneficiaries and assessing any barriers to employment. Where necessary, the county must remove those barriers to ensure that equal opportunities are provided to

> individuals with disabilities. This can be achieved by providing (1) individualized treatment when necessary and (2) effective and meaningful opportunities to assist the disabled in becoming self-sufficient. Moreover, individuals with and without disabilities must be afforded the opportunity to benefit equally from Welfare-to-Work programs and services. Counties should examine their methods of program administration from application to training, education and employment to ensure that individuals with disabilities have an equal opportunity to benefit from the Welfare-to-Work programs.

"In addition, this section specifically should include a statement regarding the obligation of the county to provide appropriate accommodations, rather than changing assignments not indicated as the primary need of the individual by the employment needs assessment.

"If the assessment determined the person needs training, the county cannot deny this opportunity if the person cannot participate the required hours because of the LD. The county must give equal and meaningful opportunity to the range of activities available to move the individual into self-supporting work, by exempting the individual and allowing the individual to participate as a volunteer at a pace appropriate to their disability needs, while seeking treatment. Not only would it violate discrimination law, but it would also defeat the purpose of CalWORKs to put an individual in an activity that did not meet an assessed need, as the individual would not gain the skills needed to obtain/retain employment. Provide an example, as follows:

> "The participant's assessment indicates she needs training. Subsequently, the individual is screened and evaluated as having a LD. She requires several reasonable accommodations, such as a tape recorder, a tutor, and extended testing time. The county must provide these reasonable accommodations, and cannot change the assignment (such as to employment or work experience) rather than providing the accommodations. Any modification in the WTW plan must be consistent with the evaluation, and mutually agreed upon by the county and recipient, unless no reasonable accommodation is possible after attempting to find a mutually agreeable accommodation. The county must provide a written notice if it makes a finding that no reasonable accommodations, including exemption, are available." (LSNC)

Response:

The Department is not amending this regulation in response to parts one, two, and three of the comment because the entire process is to determine if the individual can participate. Sections 42-712 (exemptions from welfare-to-work participation) and Section 42-713 (good cause for not participating) of existing regulations protect all participants who provide documentation that they meet the criteria for exemption or good cause.

The county must provide the evaluator with relevant information that it possesses, and that is necessary, for the evaluator to determine if the individual has a learning disability. The evaluation is an independent process to gather objective data of the individual's capabilities and weaknesses and determine its impact on the individual's ability to become employed or attend a welfare-to-work activity. Based on the evaluation, the county will determine the participation requirement for the individual.

The Department agrees with part four of the comment and is amending this regulation to clarify that the assignment and welfare-to-work plan will be modified to reflect the appropriate accommodations being provided to the participant.

The Department is not amending this section to prohibit against discrimination, given that all CalWORKs regulations are already covered under Division 21.

35. Comment:

"This proposed regulation should include a subsection outlining the procedure the evaluator must follow when s/he finds that the participant cannot participate in WtW. The section should indicate that the participant should receive an exemption but can choose to volunteer for WtW activities.

"An additional subsection should be added to discuss the principles to be incorporated into the modified WtW assignment and other accommodations. Both the Americans with Disabilities Act and California disability law emphasize that accommodations should be individualized and tailored to the particular disability and circumstances of the participant. There is no universal accommodation for participants with learning disabilities, and accommodations should be made on a case-by-case basis. The CWD's aim should be that accommodations provide the participant with an equal and meaningful opportunity to participate in the program." (NLS LAC)

Response:

Please see response to Comment 34, first and second paragraph.

It is not necessary to add a section to address "individualizing" accommodations, as the learning disabilities regulations deal with individuals. Modifying welfare-to-work assignments to include necessary accommodations is done on a case-by-case basis.

Section 42-722.42 (Renumbered to Section 42-722.32.)

36. Comment:

"Our comments to 42-722.16 [Comment 15] apply to this section, and the subsection should cross-reference that section." (LSNC)

Response:

Please see response to Comment 15.

37. Comment:

"This section should cross reference 42-722.16 to ensure that screening is offered to LEP participants. This will prevent the problem that occurred in Los Angeles County. As indicated above, DPSS refused to screen LEP participants for learning disabilities because a tool did not exist in the participant's primary language. Our comments regarding the screening and evaluation of LEP participants in section 42-722.16 apply to this section as well." (NLS LAC)

Response:

Please see response to Comments 36.

Section 42-722.5 (Renumbered to Section 42-722.4.)

38. Comment:

"**Please Add a New Section: 42-722.5 Referral Process for Disabilities Evaluation of LEPs**

"Because a screening tool does not yet exist in many languages, DSS needs to have special protections to ensure that LEPs are properly referred for learning disabilities evaluations. In addition to the suggestions in Section 42-722.16, DSS should add language requiring an evaluation whenever an LEP individual indicates that s/he believes s/he may be learning disabled. We suggest a new section be added:

> "'.514. Are LEP and request a referral to a learning disabilities evaluation if no validated screening tool exists in their primary language.'" (NLS LAC)

Response:

The Department agrees with the comment and renumbered Section 42-722.41 is being amended to add Section 42-722.414 to require that counties refer a limited-English proficient individual to a learning disabilities evaluation when there is no validated screening tool in his/her language and he/she requests an evaluation.

39. Comment:

"**Please Add A New Section: 42-722.52: Utilizing Prior Evaluations**

"For the reasons discussed fully in our comments on 42-722.313, DSS needs to add a section regarding participants who have already been evaluated for and found to have a

learning disability. This section should be inserted before current section 42-722.52, renumbering the following sections. Participants who have already undergone a learning disabilities evaluation that documents their learning disability should be allowed to present their existing documentation instead of undergoing a duplicate evaluation. The added regulation should set forth the criteria by which the CWD will evaluate the pre-existing evaluation that documents an existing learning disability, to determine if it is sufficient or whether another evaluation is required. We suggest:

> "'42-722.52 If a participant has previously been evaluated for and found to have a learning disability, the CWD will review the existing evaluation to determine if another evaluation is necessary. An evaluation will be considered acceptable, and a new learning disabilities evaluation unnecessary, if the evaluation:
>
> "1. is current (i.e. performed within the past 5 years);
>
> "2. was performed by a professional qualified to evaluate for learning disabilities;
>
> "3. is a comprehensive evaluation including:
>
> "a) a summary of a diagnostic interview;
>
> "b) an assessment of cognitive ability, academic achievement, and information processing;
>
> "c) a specific diagnosis;
>
> "d) test scores from standardized instruments;
>
> "e) a rationale for each recommended evaluation; and
>
> "f) a diagnostic summary based on the evaluation process); and
>
> "4. contains sufficient information to determine the relevance of the learning disability to the welfare-to-work plan.
>
> "If the participant has an evaluation documenting an existing learning disability that meets all of these criteria, she should not be referred to another evaluation and the conclusion of the previous evaluation should be adopted by the county. The CWD shall consult with the learning disabilities evaluator to develop appropriate accommodations for the individual.'

"These criteria for determining whether the pre-existing evaluation is sufficient are based on the criteria used by the Educational Testing Service (ETS). This organization has published a policy setting forth requirements for students wishing to document a

learning disability in order to request accommodations during standardized testing (the policy is available online at http://www.ets.org/disability/ldpolicy.html)." (NLS LAC)

Response:

The Department is not amending the section in response to this comment. It is the Department's position that a county has the right to question the validity of any prior learning disabilities evaluation that is presented by an individual. Upon examination of the prior evaluation report, the county has the option to accept all or part of the evaluation and provide the necessary accommodations, or to refer the participant to a learning disability evaluation for a second opinion or obtain additional information. Section 42-722.24 is being added to renumbered Section 42-722.2 to clarify the Department's position.

Section 42-722.511 (Renumbered to Section 42-722.411.)

40. Comment:

"1) For grammatical reasons, change this section as follows: 'Have been identified as ~~having a~~ potentially having a learning disability, based on the learning disabilities screening tool score'

"2) Add a subpart or additional section that indicates the effect the referral to the LD evaluation has upon participation in other WTW assignments or activities, i.e., that the WTW plan development is suspended until the results of the evaluation is known, that the participant has good cause for not attending other activities/assignments that conflict with attending the evaluation, etc. In the alternative, cross-refer to section 722.14." (LSNC)

Response:

The Department agrees with part one of the comment and is amending renumbered Section 42-722.411 to include the recommended language. The Department also is amending this section in response to the part of the comment regarding good cause for not attending the welfare-to-work activity or assignment due to attending the evaluation. Section 722.45 is being added to grant good cause for the time it takes to attend the learning disabilities evaluation.

41. Comment:

"This section requires that a new section be written to explain the effect of the referral to the learning disability evaluation upon participation in other WtW assignments or activities. It should provide that the development of the WtW plan is halted until the results of the learning disability evaluation are known. It should also indicate that the participant has good cause for not attending other activities or assignments that conflict with attending the evaluation. We suggest:

"'.511 When a participant is referred to a learning disabilities evaluation, development of the welfare-to-work plan, pursuant to Section 42-711.61, shall be halted until the results of the evaluation are available. The referral shall also give the participant good cause for not participating in welfare-to-work activities or assignments that conflict with attending the evaluation.'" (NLS LAC)

Response:

Please see response to Comment 40.

Section 42-722.512 (Renumbered to Section 42-722.412.)

42. Comment:

"1) Clarify that other bases exist for pre-identified learning disabilities, as follows: 'Were previously identified as having learning problems (e.g., in Special Education classes in grades kindergarten through 12, prior LD professional evaluation, etc.) …' This clarification is necessary because we have received multiple service calls complaining that recipients were asked to sign a waiver when they declined the screening on the basis that they had valid LD evaluation results. This change will clarify that under these circumstances, rather than screening the individual, the county is to provide an evaluation and/or accommodations, as appropriate.

"2) Add a subsection specifying that the County evaluator can supplement prior professional LD testing done, if the *evaluator* feels different or additional testing is needed. Participants should not be retested if tested as adults, unless there is an intervening change in the individual's circumstances that would render the prior testing invalid (ex: after-diagnosis and treatment for ADHD), or if the county LD evaluator wishes to administer alternative tests. (In the latter case, we recommend that the LD evaluator communicate with the individual, in advance of the evaluation appointment, regarding the nature and purpose of the additional tests, and be available to answer any questions the individual may have regarding the testing.)

"This clarification is needed, because we have had multiple service calls complaining that recent evaluations which otherwise met the CalWORKs standards for LD evaluations were rejected because the county contracted LD evaluator had not done the testing or had different educational qualifications that the other qualified evaluator. LD testing is time consuming and personal, involving the administration of psychological tests, and should not be imposed on recipients without justification." (LSNC)

Response:

Please see response to Comment 23, second and third paragraphs.

43. Comment:

"The existence of a prior learning disability evaluation should be listed as a previous identification as having learning problems. We suggest:

> "'.512 … were previously identified as having learning problems (e.g., in Special Education classes in grades kindergarten through 12, have a prior learning disabilities evaluation done by professionals consistent with 42-722.515, etc.) ….'" (NLS LAC)

Response:

Please see response to Comment 42.

Section 42-722.52 (Renumbered to Section 42-722.42.)

44. Comment:

"Our comments regarding good cause [Comment 24] for declining the screening apply to this section as well." (LSNC)

Response:

Please see response to Comment 23.

Section 42-722.54 (Renumbered to Section 42-722.44.)

45. Comment:

"This section requires that participants with potential LD be evaluated prior to, or concurrently with, the assessment.

"This has a negative impact on participants, as it suspends services pending the results of the LD Evaluation. Furthermore, the fact that the LD Evaluation is pending does not suspend the 18/24-month Welfare-to-Work or 60-month CalWORKs clocks. Thus, the clocks are still ticking while the participants are not receiving employment services.

"This also has a negative impact on participation rates, since participants have a high no show rate to LD Evaluation appointments. Our primary LD contractor reports a 72% no show rate to LD Evaluation appointments. And since a thorough LD Evaluation requires multiple appointments, the no show rate prolongs the evaluation process. The fact that participants cannot be sanctioned for failing to participate in LD Screening and/or Evaluation further compounds the problem. Furthermore, if TANF participation rate requirements are increased with TANF reauthorization, the consequences will be detrimental.

"San Diego recommends that participants continue in their regular Welfare-to-Work activities pending the results of the LD Evaluation. If the participant needs time off from regularly scheduled activities to complete the Evaluation, counties can either grant good cause 'leave' or can schedule the participant to an Assessment component to credit the participant for the hours spent in the Evaluation. Until a participant is **verified** as having LD, CWDs should continue the normal Welfare-to-Work process, keeping in mind the potential for LD.

"San Diego also recommends that, once the results of the LD Evaluation are conclusive (LD or no LD), the CWD must take appropriate action (this may include retrospective adjustment of the 18/24-month Welfare-to-Work clock, modification of Welfare-to-Work Plan to include accommodations, etc.)." (SD HHSA)

Response:

The Department agrees with the comment that participants should continue regular welfare-to-work activities pending the results of the evaluation and is adding Section 42-722.45 to give "good cause" for attending the evaluation if participating in welfare-to-work activities and/or assignments.

In regard to the last paragraph of the comment, the Department does not need to respond, given that San Diego's recommendation is already contained in the renumbered Section 42-722.81, regarding retrospective adjustment of the 18- and 24-month time clock.

46. Comment:

"1) Add a subsection that clarifies that if LD evaluation is done concurrently with the assessment, the county must ensure no sanction process commences if the individual has problems attending/complying with assessment process, until LD evaluation is complete. These problems may stem, fully or in part, from the disability, and would be good cause for the failure.

"2) Add a subsection that clarifies that the WTW plan should not be developed until after the evaluation is completed. Otherwise, the WTW plan may be inappropriate. Additionally, the LD evaluator's report may have a discussion of appropriate long and short-range employment goals that would be important for the development of the plan." (LSNC)

Response:

The Department is not amending this section to include language that if the evaluation and assessment are done concurrently, and the individual has compliance problems, the sanction will not begin until the results of the evaluation are known. Renumbered Section 42-722.7 informs counties not to sanction individuals when it is determined that a learning disability diminished the individual's ability to participate.

In response part two of the comment, no changes are necessary, as this process is already addressed in renumbered Section 42-722.532(c).

47. Comment:

"This section needs to have a subsection explaining that the WtW plan should not be developed until after the evaluation is completed. If the WtW plan is made without waiting for the results of the evaluation, it is likely to be inappropriate for the participant. The results of the evaluation may include a discussion by the evaluator of appropriate employment goals that would be important for developing an appropriate WtW plan. We suggest:

> "'.54 … must be evaluated prior to, or concurrently with, the assessment. However, the welfare-to-work plan shall not be developed or signed until the results of the learning disabilities evaluation are available.'" (NLS LAC)

Response:

Please see response to Comment 46.

Section 42-722.55 (Renumbered to Section 42-722.46.)

48. Comment:

"Concern: There are two concerns with this section.

"1. Currently under this section, individuals without proper educational qualifications may perform learning disability evaluations. Most test publishers require a Masters Degree in a counseling related field in order to interpret validated learning disability testing instruments. (For example, in order to interpret the Woodcock Johnson III, an MA or MS is required.) Even the August 4, 2003 Notice of Proposed Changes in Regulations of the California Department of Social Services (CDSS) – Section 42-722.55 et seq. does not specify the necessary Masters Degree.

"Recommendation: Phrasing for this section should be as follows:

> "'Counties must use trained, qualified learning disability evaluation professionals with a minimum of a Masters degree in a counseling or psychology related field that use recognized and validated learning disabilities evaluation tools to identify learning disabilities and to determine the appropriate accommodations for individuals with learning disabilities.'

"2. The words 'validated learning disabilities evaluation tools' mean different things to different learning disability evaluation specialists. In order to minimize this

problem, most counties in California are giving examples of specific testing instruments that would qualify.

"Recommendation: Phrasing for this section should be consistent with the All County Letter 01-70 dated October 17, 2001, and include the following:

"'Counties must use trained, qualified learning disability evaluation professionals with a minimum of a Masters degree in a counseling or psychology related field that use recognized and validated learning disabilities evaluation tools to identify learning disabilities and to determine the appropriate accommodations for individuals with learning disabilities. The learning disabilities evaluator shall use appropriate instruments to measure the following areas:

"Aptitudes/Information Processing, e.g., Wechsler Adult Intelligence Scale (WAIS), Woodcock-Johnson;

"Achievement, e.g., Wide Range Achievement Test (WRAT 3), Test of Adult Basic Education (TABE), Nelson-Denny (reading), and

"Vocational Interests, as needed to assist in the development of the WTW plan.'" (FACTS)

Response:

The Department is not amending this section to specify the qualifications that an evaluator must possess, as suggested in the comment. The Department's position is that the proposed language is unnecessary, since it is the county's responsibility to establish policies regarding an evaluator's qualifications, including the possession of appropriate credentials, to comply with renumbered Section 42-722.463.

The Department agrees with the comment that providing examples of appropriate learning disabilities evaluation instruments would be informative and is adding Section 42-722.464 to renumbered Section 42-722.46.

Sections 42-722.55 and .551 (Renumbered to Sections 42-722.46 and .461.)

49. Comment:

"These sections describe who is considered qualified to perform evaluations of learning disabilities. Section .55 states that 'trained, qualified learning disabilities evaluation professionals" will be used, while Section .551 states that qualified staff may include "county staff who have the necessary training as learning disabilities specialists.' The regulations need to provide more detailed information regarding the kind of training and qualifications that are required to perform the learning disability evaluations. There is no single test that can reveal the presence of a learning disability. Instead, an evaluator must carefully consider an array of test scores to determine if the

participant's achievement falls short of her ability. This determination can be very difficult and is it essential that it be performed **only** by evaluators with training and experience testing adults.

"It is important that the evaluations are performed by evaluations who have worked with adults with learning disabilities, rather than evaluators who work with children. Learning disabilities may be uncovered at different stages of a person's life, depending the severity of the disorder; academic, vocational, and social setting demands; and educators' knowledge of learning disabilities. The symptoms change over time so that a learning disability in a 7-year-old child looks different from one in an adult. It is therefore crucial that the evaluators are experienced in recognizing learning disorders in adults.

"We suggest:

> "'.55 Counties must use trained, qualified learning disabilities evaluation professionals who use recognized and validated learning disabilities evaluation tools to identify learning disabilities and to determine the appropriate accommodations for individuals with learning disabilities. The following professionals would generally be considered qualified to evaluate specific learning disabilities provided that they have additional training and experience in evaluating adult learning disabilities: clinical or educational psychologists; school psychologists; neuropsychologists; learning disabilities specialists; medical doctors with training and experience in the assessment of learning problems in adolescents and adults.'" (NLS LAC)

Response:

Please see the response to Comment 48, first paragraph.

Section 42-722.552 (Renumbered to Section 42-722.462.)

50. Comment:

"This section must make clear that even when a CWD chooses to subcontract for the performance of the learning disability evaluations, the CWD is ultimately responsible for the competency of the evaluators, and must monitor subcontractors to ensure they meet the standards. We suggest:

> "'.552 The county may contract with qualified learning disabilities evaluation professionals to perform the evaluations. The county is responsible for verifying and ensuring that any subcontractor meets the training standards required for evaluators set forth in §42-722.55.'" (NLS LAC)

Response:

Please see the response to Comment 48, first paragraph.

Section 42-722.554 (Renumbered to Section 42-722.465.)

51. Comment:

"We recommend deleting the language in this section regarding evaluations for non-English/non-Spanish participants since there are no validated or recognized tools at this time. This requirement could result in providing different levels of service. Our (Los Angeles County) Internal Affairs section has advised us that in order to prevent legal issues, any applicable procedure required for one language group should be required across the board.

"If this recommendation is not acceptable and in the absence of test/instruments needed to complete learning disabilities evaluations for non-English/non-Spanish speaking participants, we would then recommend clarification of the type of learning disabilities services that are to be provided to participants. If the intent is to provide them with some type of learning disability evaluation service, we recommend that CDSS provide examples of the type of services and depending on the complexity of the services to be provided, allow reasonable time to implement these services." (LA DPSS)

Response:

In response to the comment, the Department recognizes that, currently, learning disabilities evaluation tests covering all academic areas do not exist in all languages. Counties and their contracted evaluators are expected to examine as many areas as possible to determine if a limited-English proficient participant has a learning disability. Evaluators should work with bilingual/bicultural staff and focus on the key indicators of a learning disability.

52. Comment:

"We are concerned that yet again the regulations for LEP individuals are not consistent with the ACL. Furthermore, discussions alone should not form the basis of an evaluation. Tests exist in many languages that evaluate cognitive abilities. Sections (a) and (b) should be switched to read:

> "'.554(a) The use of other evaluation tools that may provide pertinent information; and/or
>
> "(b) Discussions with, and/or observations of, the participant.'

"This will ensure that, when available, tools will be used rather than relying solely on observation." (NLS LAC)

Response:

The Department agrees with the comment and is inverting renumbered Sections 42-722.465(a) and (b).

Section 42-722.554(a) (Renumbered to Section 42-722.465(b).)

53. Comment:

"This section should indicate that the discussions with the LEP individual should take into account cultural differences, as follows: 'Discussions, appropriately tailored to the individual's cultural background, with, and/or observations of, the participant; …." Asking a person if they graduated from high school makes no sense if the person's culture does not use this terminology. Counties should also be aware that a bilingual interpreter might not have sufficient familiarity with the LEP individual's cultural background to assist in this determination. We recommend that the state include the send with this document, and previously distributed to the Employment Bureau, with instructions to the counties to provide the LD evaluators with it for evaluation of LEP individuals." (LSNC)

Response:

The Department agrees with the commenter and is amending the regulation with the suggested language. In response to the recommendation that the Department send the commenter's document to counties, this request is outside the scope of this package.

Section 42-722.555 (Renumbered to Section 42-722.466.)

54. Comment:

"The regulations should contain a subsection that states that CalWORKs ancillary services may be used to pay for such evaluations, if not otherwise covered by/available through the individual's insurance or county programs." (LSNC)

Response:

The Department is not amending the regulation in response to the comment. The regulations pertaining to ancillary services for the CalWORKs Welfare-to-Work program are covered in Section 42-750.113, and in accordance with the regulation, evaluations are not considered an ancillary service.

Section 42-722.616 (Renumbered to Section 42-722.516.)

55. Comment:

"This section lists the minimum contents of a learning disabilities evaluation report. It is essential that the evaluation report reflect, in the form of a specific determination, whether or not the participant is learning disabled. We suggest:

> "'.616 A ~~summary of the participant's condition~~ diagnosis of the participant's learning disability, if one exists, and a summary of the participant's ~~and~~ service needs . . . '" (NLS LAC)

Response:

The Department is not amending this regulation in response to the comment, because this regulation already provides the information being proposed.

Section 42-722.617 (Renumbered to Section 42-722.516(a).)

56. Comment:

"As set out in .616, the evaluator is to determine the impact of the LD on the individual's ability to work/participate. Since Section .617 addresses that topic, it should be renumbered as a subsection of .616. This new subsection would have two parts. The first should read: '(1) Whether the individual's condition is such that it significantly impairs the person's ability to engage in the assessed WTW activity. If so, the CWD shall exempt the individual.' The second would read as .617 is currently drafted." (LSNC)

Response:

The Department agrees with the comment and has renumbered Section 42-722.617 as a subpart of renumbered Section 42-722.516.

The Department is not amending this regulation to include language regarding exempting the participant. Please see response to Comment 34, first paragraph.

57. Comment:

"This section ignores the possibility that the most appropriate accommodation for a learning disabled participant may be an exemption from WtW activities. We suggest adding language:

> "'.617 Whether the participant should be exempted from welfare-to-work activities or the range of recommended accommodations . . . '" (NLS LAC)

Response:

Please see response to Comment 34, first paragraph.

Section 42-722.623(a) (Renumbered to Section 42-722.523.)

58. Comment:

"As currently drafted, the regulations do not specify that the assessment employment goals needs to be coordinated with the LD evaluator, if the assessment and/or identification of employment goals occurs subsequent to the LD evaluation. Subsection (a) therefore should be modified, as follows:

> "If the learning disabilities evaluation report does not include a written discussion of the participant's short/long-term employment goals and general/specific vocational recommendations, the county will need to ensure that these issues are addressed in the assessment process as described in Section 42-711.55, in consultation with the LD evaluator." (LSNC)

Response:

The Department agrees with the comment and is amending this regulation to include the language "in consultation with the learning disabilities evaluator, as necessary."

Section 42-722.631 (Renumbered to Section 42-722.531.)

59. Comment:

"**A. The report should be provided to all participants**

"The CWD should provide the evaluation report, and all tests upon which it is based, to all individuals, regardless of whether or not a learning disability was found. Indeed, it is even more critical for those who are denied this help to get the reports. We have had problems obtaining such reports and tests. Participants need the tests and report so they can have an outside independent expert evaluate them to determine if an appeal is warranted. It is especially important that the tests themselves be provided. The independent expert will need to review them to provide an accurate assessment of the person. Language addressing this issue should be added to this section. Furthermore, this section seems to suggest that only a part of the report will be provided to the participant—the results. The participant should be given the entire report.

"DSS should modify this section to address the method by which individuals are notified of the findings of the learning disabilities evaluation. Because a learning disability will affect the person's activity and participation in WtW, the determination of whether a person has a learning disability is significant enough to require a Notice of Action. It is akin to a decision to approve or deny a Self-Initiated Program (SIP),

which also requires a Notice of Action. We suggest the language be modified as follows:

> "'.631(a) The County must inform the participant of the findings and also provide a copy and explanation of the evaluation report, tests, and tests results to the participant.'

"Additionally, we suggest that a provision be added stating that a participant may appeal the conclusion of his/her learning disability evaluation through normal hearing procedures. Obviously, if a Notice of Action is provided this will occur. If one is not issued, language needs to be added regarding hearing rights.

"Representatives of DPSS have informed us that they are developing a procedure that will allow participants to appeal the results of their learning disability evaluation and be re-evaluated by a neutral third-party evaluation. While the regulations need not include this specific procedure, participants must have some mechanism by which they may appeal the results of their learning disability evaluation." (NLS LAC)

Response:

The Department agrees with the comment and is amending renumbered Section 42-722.531(a) to specify that all participants evaluated will be provided with a copy and explanation of the evaluation report results.

Section 42-722.631(a) (Renumbered to Section 42-722.531(a).)

60. Comment:

"Add, as follows: 'The county must inform the participant, in writing, of the findings and of the person' right to file a state hearing if the participant disagrees with the findings.'" (LSNC)

Response:

In response to the comment regarding that the county must inform the participant in writing of the findings, please see response to Comment 59.

In regards to informing the participant of his/her right to file for a state hearing, Section 42-722.531(d) is being added to renumbered Section 42-722.53.

Section 42-722.632 (Renumbered to Section 42-722.532.)

61. Comment:

"1) This section should be clarified that the county take certain actions whenever a LD is confirmed, regardless of its effect on the person's ability to work/participate in WTW. Once the county is aware of the disability and the need for accommodations, it

should provide them. Thus, this section should be changed to read: 'If the learning disabilities evaluation report establishes that the participant has a learning disability and requires accommodations ~~that interferes with obtaining or retaining employment or participating in a CalWORKs program~~, the county must:

"2) This section should be re-written to differentiate between the finding of exemption and the accommodation of those who can participate, and clarify that accommodations applies to the entire range of Social Services (not just WTW) as follows: 'If the learning disabilities evaluation report establishes that the participant has a learning disability that (a) significantly interferes with obtaining or retaining employment or participating in a CalWORKs program, the county must exempt the individual; (b) 'If the learning disabilities evaluation report establishes that the participant has a learning disability that requires accommodations in ~~that interferes with obtaining or retaining employment or participating a CalWORKs program~~ Social Services' programs, the county must … (continue with current subsections a-c, renumbered as 1-3), and adding a new subsection: 'Discuss with the participant other program modifications or accommodations.'" (LSNC)

Response:

In regard to the comment to provide learning disabilities accommodations for all Social Services programs, please see response to Comment 24, first paragraph.

In regard to amending the section to specify exemption criteria for participants with learning disabilities, the exemption criteria specified in Section 42-712 applies to all CalWORKs welfare-to-work participants, therefore the amendment is not necessary.

62. Comment:

"DSS should rewrite this section to differentiate the treatment of participants with learning disabilities who should be exempted and those who can participate in WtW. The regulation should read as Ms. Berger [Comment 61] proposed:

> "'.632 If the learning disabilities evaluation report establishes that the participant has a learning disability that significantly interferes with obtaining or retaining employment or participating in a CalWORKs program, the county must exempt the individual.'" (NLS LAC)

Response:

Please see response to Comment 34, first paragraph.

Section 42-722.632(a) (Renumbered to Section 42-722.532(a).)

63. Comment:

"As explained fully in our comments to Section 42-722.631 [Comment 59], Section .632(a) should also be modified to ensure the report, tests, and test results are made available to the participant.

> "'.632(a) Provide a copy and an explanation of the evaluation report ~~results~~ and tests and test results to the participant,…'" (NLS LAC)

Response:

Please see response to Comment 59.

Section 42-722.632(b) (Renumbered to Section 42-722.532(b).)

64. Comment:

"This section should refer to non-WTW accommodations, as well. Redraft as follows: '(b) Discuss the appropriate welfare-to-work activities and reasonable accommodations needed to help the participant be successful in completing his/her welfare-to-work activities and participating in Social Services programs; and…'" (LSNC)

Response:

Please see response to Comment 24, first paragraph.

65. Comment:

"Additionally, subsection (b) must be modified to indicate that individuals who are determined to have a learning disability are entitled to accommodations in all parts of program participation, not simply in the WtW program. We suggest:

> "'.632(b) Discuss the appropriate welfare-to-work activities and reasonable accommodations needed to help the participant be successful in completing his/her welfare-to-work activities, and discuss reasonable accommodations needed to help the participant be successful in meeting his/her requirements in all CWD programs;'" (NLS LAC)

Response:

Please see response to Comment 24, first paragraph.

Section 42-722.64 (Renumbered to Section 42-722.54.)

66. Comment:

"Please clarify that copies of the report, and the tests it is based upon, are available to the participant and his/her authorized representatives. In Los Angeles County, we have had problems obtaining evaluation reports and tests from the contractors that perform the evaluations. They misunderstand the confidentiality provisions and believe that they can only release the results to the CWD. We have heard that this problem is not unique to Los Angeles County. We suggest new language be added to handle this issue:

> "'.641 Counties must treat… on a need to know basis. The record is the property of the participant, therefore counties and their contractors must make a copy of the report, test and test results available to the participant or their authorized representative upon request.'" (NLS LAC)

Response:

The Department is not amending the regulation in response to comment. Renumbered Section 42-722.531(a) specifies that the county is to share a copy of the evaluation report with the participant. Renumbered Section 42-722.541 clearly states that the evaluation report can be released, upon the participant's written consent, to outside parties, which would include authorized representatives.

Section 42-722.71 (Renumbered to Section 42-722.61.)

67. Comment:

"The Agency does not have authority to reduce hours while still requiring participation as a mandatory participant. The CalWORKs statute provides that *unless exempt* the person must do 32-35 hours. Good cause is for a temporary inability to participate or interruptions in a person's participation, such as lack of childcare, temporary illness, etc. It is not used to require a person with disabilities to participate, while running down both the WTW activity and 60-month clocks, though obtaining less than full-time access to programs and services.

"'Modification of hours' was originally proposed as part of the timing out/extension regulations and was withdrawn. The proposal should also be withdrawn here, for the same policy considerations. The issue of good cause for LD also is confusing, as LD is a lifelong condition, and it is hard to imagine good cause circumstances, i.e. anticipated to last less than 30 days, justifying a reduction of hours.

"If the Department continues to have the provision regarding reduction of hours, it should at least 1) explain how to differentiate good cause reduction of hours and exemptions; 2) insert more information to guide the determination of good cause

reduction of hours, including the requirements that the agency determine if the temporary reduction is anticipated to last less than 30 days." (LSNC)

Response:

The Department agrees with the comment regarding the reduction of participation hours as an accommodation for participants with learning disabilities and is deleting previously numbered Section 42-722.712, and renumbering Section 42-722.61 and .611(a) accordingly. Participants with learning disabilities will be required to meet the participation requirements unless exempt, in accordance with Section 42-712, or have good cause, in accordance with Section 42-713.

68. Comment:

"This section is based on the erroneous assumption that CWD's have the authority to reduce hours of participation in WtW while requiring participation. According to the CalWORKs statute, a participant must participate in 32-35 hours of activity unless s/he is exempt. (CA Welfare & Institutions Code § 11322.8(a).) Reducing the hours of participation without exempting the participant is not an accommodation, as it does not offer the participant an equivalent opportunity to benefit from the program. When a learning disabled participant cannot perform 32 hours of WtW activity, instead of offering an exemption, which is done for the non-disabled individual, DSS suggests a reduction in hours.

"The proper approach is to exempt the participant and then allow him/her to volunteer for fewer hours. Under DSS' approach, both the 24-month WtW activity and 60-month lifetime clocks continue to run during this time. As a result, a learning disabled participant given limited participation as a program modification will receive far fewer hours of training, education, or work experience during her time on CalWORKs. This does not provide participants with learning disabilities an equivalent opportunity to benefit from the program. We suggest that this entire section be deleted." (NLS LAC)

Response:

Please see response to Comment 67.

Section 42-722.711 (Renumbered to Section 42-722.61, in part.)

69. Comment:

"This section must be deleted. The county cannot develop a modified plan that meets the evaluation of reduced hours of participation by then adding additional activities to put the individual at the full number of required hours. Furthermore, requiring the participant to deviate from the primary activity identified in the employment assessment is not an accommodation, but a penalty to the individuals with disabilities by depriving them of the right to pursue their primary assessed activity for the needed hours. Additionally, even if the participant agreed that there were other needed and

desired activities, filling in these reduced hours with other activities would defeat the purpose of the accommodation. The most common reason for a reduction in hours of participation is so the individual with learning disabilities has the time to utilize adaptive techniques and accommodations in order to benefit from the activity, or other reason related to the impairment." (LSNC)

Response:

The Department does not agree with the comment to delete the section which allows supplementing one set of welfare-to-work activities with other allowable activities that are supportive of the participant's employment goals. All are activities which are identified as being beneficial for the participant, are based upon the assessment and the learning disabilities evaluation. This regulation is not unprecedented. For example, Section 42-711.571, which pertains to substance abuse assessment, allows welfare-to-work plans to include appropriate treatment requirements, including assignment to a substance abuse program, in addition to their other activities. Individuals with mental health issues can also have treatment, to assist them to successfully participate in a "primary" activity, in accordance with Section 42-711.563. Furthermore, 42-711.581 allows counties to refer participants, based on an evaluation, including those with learning disabilities, as appropriate, to any of the following: welfare-to-work activities described in Section 42-716.111, existing special programs that meet specific needs of the participant, etc. The hours of participation in supplemental activities including treatment count toward the individual's 32 or 35 hour work participation requirement.

70. Comment:

"The procedure outlined in this section is unacceptable. As discussed above [Comment 68], offering a participant limited hours of participation without exempting them from WtW requirements is not an appropriate accommodation. In addition, asking a participant to spend fewer hours of participation in his/her primary activity while also participating in "other allowable activities" does not offer a participant an equivalent opportunity to benefit from the program. A participant needs to remain entirely in the primary activity arrived at through the WtW plan process. Asking a participant to supplement his/her participation through hours in other activities both defeats the attempt at the accommodation by asking him/her to participate 32-35 hours and dilutes his/her opportunity to benefit from the WtW activity by placing him/her in activities that are not a part of their WtW plan. Supplemental activities should be assigned only if the evaluation indicates that the participant can fully participate and that the supplemental activity is appropriate and linked to their career goals." (NLS LAC)

Response:

Please see response to Comment 69.

Section 42-722.711(a) (Renumbered to Section 42-722.611.)

71. Comment:

"1) This subsection should be clarified to explain the difference between an exemption based of an inability to participate the required hours, and appropriate assignment to supplemental activities/accommodations. As described above, if a person, for a period of more than 30 days, has an impairment that significantly affects their ability to do their assessment activity (i.e. work or WTW activities), they qualify for an exemption. If the LD evaluation determines the person cannot participate for the full hours, they should be exempted, unless the restricted hours will last less than 30 days. Filling in the hours, when the evaluator concludes the person cannot do them, violates the exemption provisions and defeats the purpose of the evaluation and/or accommodation. The regulations must be clear that supplemental activities are only appropriate when the evaluator has determined the person can do the additional hours. We support the existing language only to the degree that it explains when supplemental activities are otherwise appropriate (i.e. consistent of the person's employment goals and LD evaluation), and only if the clarification regarding performing the full hours is added.

"2) Additionally, this section should discuss that it is not a reasonable accommodation to require participation when the person is able to meet the hours of participation only through significant hours spent in accommodations that the county applies to the hours of participation. For example, if a person is assessed as needing vocational training, but according to the LD evaluation can only participate in the training 15 hours a week (i.e. less than ½ the required participation), it is not reasonable to count the hours spent in various accommodations towards participation, as this deprives the person of the full WTW experience. In the WTW activity period, they would come out with less than ½ the training a non-disabled person would have received.

"3) Sub (1) inappropriately limits a reasonable accommodation (assuming the standard set out in our comments regarding supplemental activities, above, is met). The SIP limitation on home study is a general rule. The ADA requires reasonable program modifications. It is reasonable to modify this general rule, to allow disabled SIPs to study at home, if this appropriate for the individual, when non-SIPs (disabled or not) can be permitted to engage in home study. The Legislature, in creating the home study limit on SIPs did not address the ability to modify the rule as a reasonable program modification.

"4) CalWORKs contains no WTW activity called remedial training. If the Department means Adult Basic Education, which is a listed WTW activity, it should use this terminology, as "remedial education" is not otherwise defined." (LSNC)

Response:

Please see response to Comment 69 in regards to parts one and two of the comment pertaining to the modification of participation hours and reasonable accommodations.

In response to part three of the comment regarding home study (we are interpreting the comment as pertaining to "homework") for self-initiated programs, Welfare and Institutions Code Section 11352.23(a)(3)(C) prohibits individuals in self-initiated programs from counting homework time towards hours of participation. Modification of this statute to allow home study to count towards hours of participation would require legislative change.

In response to part four of the comment, the Department is deleting the words "remedial training" and inserting "adult basic education."

Section 42-722.712

72. Comment:

"In addition to the above comment regarding good cause reduction of hours, this section, if maintained, inappropriately includes the disability exemption standard as part of the definition of good cause. That language must be deleted, as follows: 'Counties may allow fewer hours of participation in welfare-to-work activities when good cause exists based on a county's determination that a condition, or other circumstances, temporarily prevents or significantly impairs an individual's ability to be regularly employed or participate in WTW activities in accordance with Section 42-713.3, but that do not met the exemption standards.'

"This language should also be changed in 42-713.1. " (LSNC)

Response:

Please see response to Comment 67.

73. Comment:

"This section inappropriately includes the disability exemption standard as part of the definition of good cause. We suggest adding language as follows:

> "'.712 … significantly impairs an individual's ability to be regularly employed or participate in WtW activities in accordance with Section 42-713.3 but that does not meet the standard for an exemption.'" (NLS LAC)

Response:

Please see response to Comment 67.

Section 42-722.8 (Renumbered to Section 42-722.7.)

74. Comment:

"Proposed section 42-722.8 specifies that the county will make the determination regarding whether a learning disability contributed to a participant's failure to participate or sanction, instead of allowing the opinion of the evaluator to be binding, which would provide more credibility to the process. Further, this section could be applied arbitrarily by counties who may not want to provide the added services or return sanction monies due to financial reasons." (CAI)

Response:

In response to the comment, renumbered Section 42-722.74 is being amended to clarify that if the county cannot determine from the evaluation report if the disability contributed to the participant's failure to participate, the county must consult with the evaluator to make the determination. It would not be feasible, nor practical, to require that an evaluator participate in every good cause determination, given that, as stated earlier, learning disability evaluator resources vary from county to county. Finally, if the client does not agree with the county's findings, the participant has been informed of his/her right to file for a state hearing in accordance with Section 42-722.531(d).

Section 42-722.811 (Renumbered to Section 42-722.74.)

75. Comment:

"This section needs to be modified to make it clear that only a trained LD professional can determine whether the disability contributed to the alleged WTW failure. The language therefore should be changed, as follows: "~~If the county cannot determine if the disability contributed to the participant's failure to participate, t~~The county must ~~will~~ consult with the learning disabilities evaluator or another learning disabilities specialist to ~~make the~~ determin~~ation~~ if the disability contributed to the participant's failure to participate, unless it intends to find the LD contributed to the failure, in which case the consultation is optional.'" (LSNC)

Response:

Please see response to Comment 74.

76. Comment:

"This section provides that during a good cause compliance determination, the CWD will first attempt to determine if the disability contributed to the participant's failure to participate. This is not a determination that the CWD is equipped to make. In every case, the CWD needs to consult with a learning disability evaluator to determine the role that the participant's disability played in their failure to participate. We support Ms. Berger's [Comment 75] proposed text:

"'.811 ~~If the county cannot determine if the disability contributed to the participant's failure to participate, t~~The county must ~~will~~ consult with the learning disabilities evaluator or another learning disabilities specialist to ~~make the~~ determine ~~ation~~ if the disability contributed to the participant's failure to participate, unless it agrees that the learning disability contributed to the failure, in which case the consultation is optional.'" (NLS LAC)

Response:

Please see response to Comment 74.

Section 42-722.823 (Renumbered to Section 42-722.723.)

77. Comment:

"This section should indicate that, depending on the evaluation result, the county shall review the case for an exemption, as follows: "As necessary, the county shall also review the individual for exemption. If not exempt, the county shall also review the welfare-to-work plan and modify it in accordance with Section 42-722.632(c), and make any other reasonable program or service modifications recommended." (LSNC)

Response:

The Department addressed the first part of this comment by amending renumbered Section 42-722.721.

The Department is not amending this section in response to the part of the comment regarding making "any other reasonable program or service modifications recommended" since the proposal is already covered under renumbered Section 42-722.532(c).

78. Comment:

"This section should indicate that the CWD should first determine whether the participant is eligible for an exemption. If not, only then should the county review the participant's WtW plan and make appropriate modifications. The CWD should also, at that point, make any other reasonable program or service modifications, not limited to accommodations within the WtW plan. We support Ms. Berger's [Comment 78] proposed text:

"'.823 As necessary, the county shall also review the individual for exemption. If not exempt, the county shall also review the welfare-to-work plan and modify it in accordance with Section 42-722.632(c), and make any other reasonable program or service modifications.'" (NLS LAC)

Response:

Please see response to Comment 77.

Section 42-722.83 (Renumbered to Section 42-722.73.)

79. Comment:

"We agree with Ms. Berger's comments [Comment 81] that DSS needs to add a section to address how to cure a sanction when a learning disability exists but was not a factor that led to the sanction. Furthermore, the comments set out in Section 42-711.811 [Comment 77] apply here. The CWD is not competent to determine if the learning disability contributed to an instance of noncompliance—they need to consult a professional. Finally, if the participant's learning disability did contribute to the sanction, that suggests that s/he was not properly accommodated. Therefore, the sanction should be rescinded **and** there should not be an determination of noncompliance. This information should be added so the sanction is not counted towards the graduated penalties." (NLS LAC)

Response:

The Department agrees with the comment that a section is needed to instruct counties on how to proceed with a sanction when it is determined that a learning disability exists and was not a factor in the sanction. Section 42-722.75 is being added to renumbered Section 42-722.7, accordingly.

In response to the comment that the county should consult with the evaluator to determine if the learning disability contributed to an instance of noncompliance, please see response to Comment 74.

In response to the comment requesting additional language to ensure that the rescinded sanction will not be counted towards the graduated penalties, the Department is renumbering Section 42-722.841 as Section 42-722.731(a), and further amending it to state that the county will rescind the sanction and the participant shall not be considered to have an instance of noncompliance in accordance with Section 42-721.43.

Section 42-722.84 (Renumbered to Section 42-722.731.)

80. Comment:

"A section needs to be added that addresses curing a sanction when LD exists, but was not a factor that led to the sanction. In these circumstances, the evaluator first shall determine whether the person can regularly work or participate in WTW activities or should be exempt. If the person can participate the full hours, the evaluator shall work with the county and participant to develop an appropriate cure plan, and modified

WTW plan for on-going WTW activities post-cure, and recommend any other program or services reasonable modifications or accommodations.

"If the assessment determined the person needs training, the county cannot deny this opportunity if the person cannot participate the required hours because of the LD. The county must give equal and meaningful opportunity to the range of activities available to move the individual into self-supporting work. Not only would it violate discrimination law, but it also would defeat the purpose of CalWORKs to put an individual in an activity that did not meet an assessed need, as they would not gain the skills needed to obtain/retain employment." (LSNC)

Response:

In response to the first part of the comment regarding curing of the sanction when a learning disability exists, but was not a factor that lead to the sanction, please see the response to Comment 79, first paragraph.

In regard to the portion of the comment pertaining to discrimination, individuals are already protected by the provisions of Division 21. Additionally, renumbered Section 42-722.723 requires the county to consider the learning disability evaluation in continuing or modifying the welfare-to-work plan. The Department does not consider modification of a plan in accordance with the learning disability evaluation to be discrimination. Any new activities assigned would still have to be consistent with the individual's assessment.

Section 42-722.841 (Renumbered to Section 42-722.731(a).)

81. Comment:

"This section should clarify that the county should offer the individual the choice of receiving retroactive benefits, but having the time count against the 60-month limit (unless a failure to accommodate tolls the 60-month time, *see* below), or just having the sanction lifted." (LSNC)

Response:

In response to the comment, the Department is adding Section 42722.731(b) to include language that the participant will have the option of resuming payments without receiving back benefits, so that he/she retains months of future potential CalWORKs eligibility; or receiving retroactive cash benefits for sanctioned months which would count toward the individual's 60-month time limit.

Section 42-722.9 (Renumbered to Section 42-722.8.)

82. Comment:

"Generally, the regulations should make it clear that this remedy is available any time the county failed to screen for unknown disabilities and accommodate known or unscreened disabilities." (LSNC)

Response:

The Department is not amending this section in response to the comment proposing that retrospective adjustments of the 18- and 24-month clock be made any time the county fails to screen for unknown disabilities and accommodate known or unscreened disabilities. The comment is broad and appears to cover areas beyond CalWORKs welfare-to-work and learning disabilities, therefore, it is outside the scope of this regulation package.

Section 42-722.914 (Renumbered to Section 42-722.814.)

83. Comment:

"The state needs to clarify what 'not making satisfactory progress or benefiting from the WTW activities' means. Counties seem to be interpreting this to mean only failure to make satisfactory progress, in the sense that the person was put into good cause/compliance. Many counties have no other written standards, such as being placed on academic probation, being unable to do the assessed activity for the full hour requirement (which case should also be reviewed for exemption), given activities that were not related to the assessed employment goal (or switched from the assessed goal to another activity when not desired by the participant), exceedingly poor grades short of academic probation/sanction, periods of academic sanction/probation, and other issues in which the LD interfered with the person's ability to work after completing the training, etc.

"We recommend the state issue an 'including, but not limited to' list of examples of not benefiting from the WTW activity, based on the ones indicated above." (LSNC)

Response:

The Department is not amending this section in response to comment. While it agrees that "failing to maintain satisfactory progress" should be a trigger to offer learning disabilities screening, the Department does not agree that "failing to benefit from an activity" is another trigger. Determining whether an individual is "failing to make satisfactory progress" can be measured through the use of objective criteria such as test scores; completion of, and grades on, required program components or assignments, and course grades. However, trying to determine if an individual is "failing to benefit from an activity" is much too vague of a process and would likely result in subjective determinations in many cases.

84. Comment:

"This section lays out the criteria for determining whether a participant is entitled to have time added back on her 18- or 24-month clock. One of the criteria is that the participant 'did not make satisfactory progress or benefit from the WtW activities.' The regulations should provide an explanation of what constitutes 'satisfactory progress or benefit from the WtW activities.' DSS has held that a student fails to make satisfactory progress in a program if she cannot maintain a C average or above in classes. However, there are many additional ways in which a participant could fail to benefit from her WtW activities. Failure to benefit could be demonstrated by progressing in the program at a slower rate due to a need to take fewer classes per term, being unable to do the assessed activity for the entirety of the required hours, or being given activities that were not related to the assessed employment goal.

"In our experience, participants can fail to benefit from participation in program while maintaining over a C average. One participant was enrolled in a community college with the goal of enrolling in a nursing program. Her learning disability caused her to need additional study hours outside of class and prevented her from taking a full load of classes. This inability to advance in a program at the rate at which a non-disabled prevented her from having an equal opportunity to benefit from the program. A student without a learning disability could have completed the program within the 24-month period allowed for education.

"However, the participant with a learning disability made significantly less progress towards her degree by the time she exhausted her 24-month clock. This means that the disabled participant was not given an equivalent opportunity to benefit from the program, regardless of whether her grades were above a C average. We suggest adding subsections to this section:

> "'.914(a) A participant did not make satisfactory progress in the WtW activities if s/he cannot maintain a C average or higher.
>
> "(b) The situations in which a participant will be determined not to have benefited from his/her WtW activities include, but are not limited to: s/he was placed on academic probation; s/he was unable to progress in the program at the normal rate; s/he was unable to do the assessed activity for the full hour requirement; s/he was required to participate in activities that were not related to the assessed employment goal when not desired by the participant; etc.'" (NLS LAC)

Response:

Please see response to Comment 83.

Section 42-722.913(a) (Renumbered to Section 42-722.813(a).)

85. Comment:

"If the person with LD has not screened, or was not accommodated, and did not make progress in or benefit from the activity, it is irrelevant whether a plan was signed. The person should still recover any time counted against either or the two clocks." (LSNC)

Response:

The Department is not amending this section in response to the comment regarding having a signed welfare-to-work plan as one of the criteria for the adjustment of the 18-, 24-, or 60-month time clock. A participant who has not signed a welfare-to-work plan, has no 18- or 24-month clock and would not need any retrospective adjustments. The adjustment of the 18- or 24-month clock is for the receipt of services and has no affect on the 60-month clock. Participants must meet exemption criteria for adjustment of the 60-month time clock in accordance with Section 42-302.

Section 42-722.92 et seq. (Renumbered to Section 42-722.82 et seq.)

86. Comment:

"This section requires counties to retrospectively adjust a qualifying participant's 18/24-month time clock for every partial month or full month that the individual participated in a Welfare-to-Work activity without appropriate accommodations and amending the Welfare-to-Work plan to include the appropriate activities and/or recommendations.

"This section leaves out the qualifying criteria that are specified in ACL 01-70, pages 18 and 19. These pages state that 'counties must retrospectively adjust an individual's 18- or 24-month time clock when the individual meets **all of the following criteria**:

"1. Has a verified learning disability; **and**

"2. One of the following applies:

"a. Was not screened and evaluated for learning disabilities before signing the WTW plan; or

"b. Was screened by the county, evaluated, and found to have a learning disability; **and**

"3. Signed a WTW plan and participated in WTW activities, but without appropriate accommodations for his/her learning disabilities; **and**

"4. Did not make satisfactory progress or benefit from WTW activities.'

"San Diego recommends that this language be retained and incorporated into MPP. There is no need to adjust the WtoW clock, if the participant clearly benefited from the assigned activities." (SD HHSA)

Response:

It is not necessary to amend this section in response to this comment as renumbered Section 42-722.81 does list the criteria for retrospective adjustment of the 18- and 24-month clock.

Section 42-722.92 (Renumbered to Section 42-722.82.)

87. Comment:

"The Department's remedy for adjusting time to remedy non-accommodation needs to take into account all lost time. This may not be month for month, as is listed in the proposed regulations. An example of this is when someone would need to redo part of a training, and this may be over a fixed period (such as 2 semesters) vs. the original number of months, because of when the courses are offered. (See also comment to 722.94, below, re: 60-month clock.) We recommend use of a Handbook section to provide an example.

> "The Participant needs to retake 4 classes, with accommodations. The accommodation is to do only 2 classes a semester. It would take her 2 semesters to make up the work affected by the lack of accommodation. The participant's training clock and 60-month clock would be reset for the number of months needed to complete the two semesters." (LSNC)

Response:

The Department is not amending this regulation in response to this comment. The Department does not have the statutory authority to extend training beyond the month for month adjustment, nor to extend the 60-month clock as an accommodation.

In response to the suggested example that an individual receive more than 18 or 24 months of welfare-to-work time because they have a learning disability which makes the individual unable to take more than two classes a semester, Welfare and Institutions Code Sections 11320.1(c) and (d)(1), and 11454(a)(1) and (4) limit training activities to 18 or 24 months, once the person signs the welfare-to-work plan. Welfare and Institutions Code Section 11454(b) limits time on aid to a cumulative total of 60 months unless the individual meets the extended criteria in accordance with Section 42-302 of the 60-month time limit regulations.

88. Comment:

"This section should be modified to adjust the time clock for all lost time. DSS' month by month approach is not appropriate. For example, an appropriate accommodation for

a participant may be that she needs longer time to complete a particular training program. A participant who has trouble understanding written information may require 20 hours of study time for only 4 credits of classes, meaning she can only take one or two courses per semester. The participant's clock should be credited with the time required to complete the training with the accommodation, not just the time the participant originally spent in the training program.

"For example, using the example above, a participant with a learning disability may have attended school for 2 semesters before she received accommodations. After being evaluated, she may receive an accommodation to take fewer classes per semester than a non-disabled student. This would allow her the extra time to study she needs to be successful in her classes. Her clock should not be credited only with the 2 semesters she had already spent in school. Instead, it should be credited with the time she would need to complete those 2 semesters worth of classes with her accommodation, which may take her 3 or 4 semesters." (NLS LAC)

Response:

See response to Comment 87.

Section 42-722.923 (Renumbered to Section 42-722.823.)

89. Comment:

"This section should refer to the possibility of an exemption, as follows: "If not found exempt, amend his/her WTW plan to include appropriate WTW activities, services and/or accommodations." (LSNC)

Response:

Please see the response to Comment 77.

Section 42-722.93 (Renumbered to Section 42-722.83.)

90. Comment:

"This section needs to be clarified to exempt from this bar people who don't want a screening or evaluation because of good cause, such as prior disability evaluations and or when the refusal is based on LD or other confirmed impairments, such as mental health issues. It also should not apply to those not screened/evaluated for because of missed appointments/no shows, where for good cause or linked to the LD or other impairments." (LSNC)

Response:

Please see response to Comment 24.

91. Comment:

"We suggest added language for the reasons set forth in our comments to 42-722.71 [Comment 68]:

> "'.93 Participants who refuse without good cause to be screened, evaluated or accommodated . . .'" (NLS LAC)

Response:

Please see response to Comment 90.

Section 42-722.94 (Renumbered to Section 42-722.84.)

92. Comment:

"This section should be DELETED. Instead, a section should be added that states that the 60-month limit is also is tolled for the period the individual lost time because of a lack of accommodations. Otherwise, the remedy is ineffective. Anti-discrimination requires making the person whole. This is not a fundamental alteration of the program (which recognizes the need to toll the 60-month for disabilities and equitable estoppel principles)." (LSNC)

Response:

See response to Comment 85.

93. Comment:

"This section should be deleted. It should be replaced with a section explaining that the participant will be credited with months on her 60-month time clock for the period she did not benefit from the program because of a lack of accommodations. Such a section is necessary to ensure that participants who did not receive accommodations will still receive an equal opportunity to benefit from the program. Crediting the 60-month clock is not a fundamental alteration of the program, as the program already tolls the 60-month clock for people with disabilities. We suggest:

> "".94 When a participant meets the criteria in Section 42-722.91, the county will do the following:
>
> "(a) When an individual previously participated in WtW activities without appropriate accommodations and did not make satisfactory progress or benefit from his or her WtW activities, as set out in Section 42-722.914, the county shall credit the individuals 60-month time clock with the number of months the individual requires to complete the previous WtW activities with appropriate accommodations.

"(b) Provide him/her with written notice of the number of months credited back to his/her 60-month time clock, the number of months remaining on his/her 60-month time clock, and the reason for the adjustment. (NLS LAC)

Response:

Please see response to Comment 92.

Section 42-722.952 (Renumbered to Section 42-722.852.)

94. Comment:

"1) This section should clarify that the second county should only develop a new/modify an old WTW plan 'for cause.' If the person can continue in the plan activities, and had previously been accommodated, there is no need to change the plan. Receiving counties in ITCs should not unilaterally change plans, as this interferes with (or terminates) the individual's progress in the identified activity and employment goal. Given the time limits, it is not appropriate to have participants start new activities, as long as the current activity will lead to employment. The regulation should be limited to the development of a WTW plan, when one had not previously been developed or the participant agrees a new one is needed. The language should read as follows:

"'The second county must develop a new, or modify the existing, welfare-to-work plan, if the sending county had not developed a plan, or if the participant agrees that the existing plan will not lead to self-sufficiency and/or desires to modify it. If the sending county had not developed a plan, the second county shall develop a plan to reflect appropriate welfare-to-work activities and necessary reasonable accommodations … [see below], the learning disabilities evaluation, and discussions between the county and the participant, as set out in MPP § 42-722.632.'

"2) Participants should not be required to attend a new assessment. Sending counties should be required to send their assessment. All counties are required to address the factors set out by statute for assessment. If the receiving county offers additional and different testing or screening, it can so advise the participant, and make participation in those additional components optional. This section should be changed to read as follows: '…based on the results of the assessment, if the first county has not conducted an assessment ~~necessary~~, the learning disabilities evaluation, and discussions between the county and the participant.'" (LSNC)

Response:

The Department does not agree with this comment that the second county should only develop a new or modify a welfare-to-work plan for cause, as there is nothing in statute or regulations that require the second county to keep the welfare-to-work plan, there

may be instances where the welfare-to-work plan may be appropriate for the second county. It is the Department's position that circumstances, such as labor market conditions, demand occupations, types of training programs available, and other resources, vary among counties. These circumstances would warrant amending the welfare-to-work plan.

However, the Department is amending the regulation to clarify that the second county must develop, as necessary, a new or modify the existing welfare-to-work plan to reflect appropriate welfare-to-work activities and necessary accommodations based on the review of documents received, reevaluation of the learning disabilities evaluation and the original assessment. Allowing for the use of existing learning disability evaluations and original assessments, when appropriate, will reduce duplication of effort.

95. Comment:

"DSS should revise this section to indicate that the second county should not ask the participant to undergo another screening and/or evaluation for learning disabilities. Instead, the second county should follow the evaluation performed in the first county. In addition, it should be revised to indicate that the second county should modify the existing WtW plan only if modifications are necessary. If the WtW plan developed in the first county provides appropriate activities and accommodations, there is no need to modify it. We support Ms. Berger's [Comment 95] proposed text:

> "'.952 The second county must develop a new, or modify the existing, welfare-to-work plan, if the sending county had not developed a plan or if the participant agrees that the plan will not lead to self-sufficiency and/or desires to modify the existing plan. If no plan had been developed in the sending county, the second county shall develop a plan to reflect appropriate welfare-to-work activities and necessary reasonable accommodations . . .'" (NLS LAC)

Response:

Please see response to Comment 94.

Section 42-722.953 (Renumbered to Section 42-722.853.)

96. Comment:

"1) This section should be DELETED. The ADA and California law require only that the person be a qualified disabled individual and confirmation of needed accommodations. The first county can provide this information (with the participant's permission) *without* the person having to release the full report. Other issues *not* related to the sought after LD accommodations may be listed in the full report. The state cannot force the person to waive their privacy rights just to get an accommodation on an undisputed evaluation of LD." (LSNC)

Response:

In response to the comment requesting deletion of this section, the Department's position is that when a participant does not grant permission to have the learning disabilities information released from the first county to the second county, then the second county has no basis to establish good cause and/or provide accommodations due to a learning disability.

In addition, renumbered Section 42-722.851 specifies that the first county send the second county a copy of the evaluation, and does not restrict the second county from asking for an additional screening and/or evaluation. While it will rarely occur, the second county has the right to question any previous evaluation. As specified in Section 42-722.24, there may be instances where the second screening and evaluation are warranted.

97. Comment:

"This section explains that the participant shall not have good cause for failure to participate in the second county, based on failure to provide accommodations, when the participant refused permission for the first county to forward the report. This section should be deleted. Counties are responsible for providing accommodations to all participants with known disabilities. The information that triggers the counties' responsibility to accommodate a participant can be provided without sending the full report from the learning disabilities evaluation. The participant may have discussed personal information with the initial evaluator that is irrelevant to providing accommodations in the second county. The state cannot force the participant to waive her privacy rights in order to get an accommodation for her known learning disability. Therefore, this section should be deleted in its entirety." (NLS LAC)

Response:

Please see response to Comment 96.

General

98. Comment:

"In order to clarify that participants have a right to appeal determinations made by counties with respect to learning disability screenings and/or evaluations, the proposed regulations should specifically refer to the hearing and formal grievance procedures set forth in section 42-721.5." (CAI)

Response:

The Department is adding Section 42-722.121(h), which requires counties to provide participants with information that they have a right to file for a state hearing if they

disagree with a county action. Additionally, Sections 42-722.531(d) and .532(d) are being added. These sections require counties to inform the participant of the right to file for a state hearing if they disagree with a county action based on the evaluation, at the time the county reviews the learning disabilities evaluation results with the participant.

99. Comment:

"Finally, how do counties ensure that reasonable accommodations are actually provided to participants found to have learning disabilities? Is this addressed in another section of regulations, or is it assumed that if the participant is not receiving proper accommodations that the county would rectify the situation and has some enforcement power to do so?" (CAI)

Response:

Counties are obligated by the learning disabilities regulations to provide what they can to assist individuals in obtaining accommodations and to tap into all available resources to the extent possible. Additionally, please see response to Comment 98.

100. Comment:

"There is no regulation or reference to the fact that once LD is confirmed, the review for and provision of accommodations would operate throughout all CWD's programs and state contacts with the individual, and is not limited to Welfare to Work. Thus, for example, if an individual is identified with a LD that affects their ability to read, and the reasonable accommodation is to receive oral instructions, the case must be flagged and all workers must ensure that the individual is orally informed of the content of written notices and materials." (LSNC and NLS LAC)

Response:

Please see response to Comment 24.

101. Comment:

"There is no regulation or provision for the screening of recipients exempt from or not required to participate in WTW (i.e. including CalLEARN teens and 2nd parents). These individuals have the right to be screened and evaluated for LD. This is particularly important with CalLEARN teens, who, though not in WTW, have a system of mandatory attendance with concomitant notices, meetings and obligations. K-12 Special Education, unfortunately, does not always provide full testing and evaluation, and any accommodations are geared toward schooling, and not the CDSS program. 2nd parents, who are not otherwise participating, must have access to the screening and evaluation, in case they need or want to participate. It will cause an unnecessary and inappropriate delay if the 2nd parent is not offered the screening until the participating parent is facing a sanction. The information may also guide the 2nd parents' decision

on whether to volunteer for activities, or whether they should be exempt. Exempt individuals may nonetheless wish to participate, and/or cannot appropriately benefit from other treatment absent a screening and evaluation." (LSNC)

Response:

The Department is not amending this regulation package with respect to providing learning disability screenings and evaluations to exempt individuals, such as CalLEARN participants and second parents. With respect to individuals in CalLEARN, they are not welfare-to-work participants, and therefore, do not fall within the scope of this regulation package. In regard to screening to second parents or exempt individuals, there is no need to amend this section, as these regulations apply to welfare-to-work participants and second parents or exempt individuals would be offered learning disabilities screening and evaluation when they entered the program.

102. Comment:

"There is no parallel set of instructions that the process of offering a validated screening, and the inability to sanction for refusal, applies to mental disabilities. The regulations do state that if a mental health impairment is suspected, that the county is to make a referral for evaluation. There is no requirement in the current regulations, however, that the counties offer a screen. Just as with LD, the prevalence of mental health impairments in the welfare population is high, and it is often a hidden or masked condition." (LSNC)

Response:

The Department is not adding regulations to govern mental disabilities because they are outside the scope of this package. However, the Department is addressing some of the issues by adding Section 42-722.16 to Section 42-722.1, to require that when it is suspected that a participant has a health, behavioral health and learning disabilities symptoms, counties should address the health-related issues first.

103. Comment:

"WTW 17 Modifications

"This form should be modified as follows: 'Will get you the help and services you need starting from the date you are evaluated as having a Learning Disability. ~~sign a revised welfare-to-work plan prepared by you and your worker.~~'" (LSNC)

Response:

This comment is outside the scope of this regulation package.

104. Comment:

"The proposed regulations regarding limited-English proficiency (LEP) participant fail to comply with either All County Letter (hereafter "ACL") 01-70, which outlined the Learning Disability policy, or anti-discrimination statutes and regulations ensuring equal treatment regardless of national origin and language proficiency. Although no standardized screening tools exist in languages other than English, LEP participants must still be given a screening and/or evaluation process that is as effective as that offered to non-LEP participants. The proposed regulations do not offer LEP participants an equivalent screening and/or evaluation process." (NLS LAC)

Response:

Please see response to Comment 15.

105. Comment:

"In general, the regulations lack specific criteria by which a CWD's implementation of the learning disability procedures can be judged. There needs to be criteria to:

"a. specify what constitutes sufficient training and experience to conduct learning disability evaluations;

"b. determine if a prior learning disability evaluation is still valid or if a participant needs to undergo a second evaluation; and

"c. define "satisfactory" progress and "benefit" from the Welfare to Work activity.

"This need for specific criteria is especially important because many parts of the learning disability evaluation process will be carried out by subcontractors, rather than the CWD itself. The regulations must provide CWDs with specific criteria that they can then use to monitor the subcontractors." (NLS LAC)

Response:

In regards to part a. of the comment, please see response to Comment 48, first paragraph.

In regards to part b. of the comment, please see response to Comment 23, second paragraph.

In regards to part c. of the comment, please see response to Comment 83.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from January 23, 2004 to February 6, 2004 was received from the following:

County of Los Angeles Department of Public Social Services (LA DPSS)

Foster Assessment Center & Testing Service, Inc. (FACTS)

Legal Services of Northern California;Western Center on Law & Poverty; Bay Area Legal Aid; Neighborhood Legal Services of LA; Legal Aid Society of San Mateo County; Coalition of California Welfare Rights Organizations; Legal Aid Society of San Diego County (LSNC)

Neighborhood Legal Services of Los Angeles County (NLS LAC)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 42-701.2(l)(2)

1. Comment:

"Concern: **Some counties in California are *including the developmentally disabled* population under this definition, and some are *excluding* them. The definition remains unclear, even after your January 22, 2004 modifications. It is our belief that under current ADA law, the developmentally disabled population is entitled to services under this regulation, as most counties are requesting identification of this disability (in addition to the learning disability identification).**

"As defined by the Title V California Education Code, learning disability inherently includes a demonstration *a minimum of low average to above average intellectual ability* in a combination with the defined manifested difficulties. Remember that a learning disability (in short) means *at least low average* intellectual capacity, and below average academic score or scores. For example, a high school graduate of above average intelligence scoring at the 5th grade level in math would be defined as learning disabled.

"However, a developmentally disabled individual would show a *below average* intellectual capacity and below average academic scores. For example, a person who dropped out of school at the 10th grade level, who scored in the well below average IQ range, and demonstrated a 5th grade math level may be defined as developmentally disabled.

"Recommendation: If it is the intention to ***exclude*** the developmentally disabled population, we recommend the following phrasing at the end of the definition:

"'…For the purposes of the CalWORKs WTW program, **during the evaluation the participant must demonstrate a minimum of low average intellectual ability**, and these disorders must **significantly** interfere with the participant's ability to obtain employment, retain employment or to participant in welfare-to-work activities.'

"(Please note we have also added the word 'significantly' because almost all disorders 'interfere' to some extent in the participant's ability to obtain or retain employment.)

"Recommendation: However, if it is your intention to ***include*** the developmentally disabled population in this program, we recommend the following phrasing occur at the beginning of the section:

"'Learning disabilities' means a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. **For the purposes of the CalWORKs program, this definition encompasses both the learning disabled and developmentally disabled population.'**

"If you are including the developmentally disabled population, we additionally recommend the following phrasing be added to the end of the section:

"'…For the purposes of the CalWORKs WTW program, these disorders must **significantly** interfere with the participant's ability to obtain employment, retain employment or to participant in welfare-to-work activities.'" (FACTS)

Response:

The comment is outside the scope of the 15-day renotice changes.

2. Comment:

"We continue to encourage the Department to change the definition, by removing the statement 'For purposes of CalWORKs ….' This is needed to clarify that the assessment of whether LD exists is separate from whether the individual requires an accommodation for the WTW plan. The Department rejected comments to exclude this paragraph, citing the intent of the LD workgroup to:

"clearly connect the *existence of a learning disability* to a recipient's ability to participate in CalWORKs welfare-to-work activities or to obtain or retain employment, and *if a learning disability exists*, to provide the individual with the appropriate services and accommodations to ensure successful participation.

"As a member of the workgroup, I can confirm that the workgroup intended to determine the presence of LD, *in order to* determine what accommodations, if any, were needed for participation, and not to limit the actual definition of a Learning

Disability. Even in the language the Department cites in its statement of reason, italicized above, reflects the fact that whether a Learning Disability *exists* was a factor accepted by the workgroup.

"Counties are using the 2nd paragraph of the definition to limit the professional evaluation of *whether* an LD exists. This is contrary to the purpose of the screening and evaluation, which is to determine first whether the person has a LD, and if so, whether they require accommodations to participate. Neighborhood Legal Services previously provided an example of an LA County LD evaluator finding the recipient had *no learning disability* though her testing results showed significant learning discrepancies, because she could perform unskilled work. The activity or employment goal is a separate issue from the determination of whether the person had LD. The evaluator's understanding of the definition of LD 'for purposes of CalWORKs,' bypasses the legal requirement to perform an assessment of appropriate activities *after* the evaluation.

"The LD advisory group's concerns about this connection are met through the full detail of the LD regulations, and are not accomplished by maintaining the statement in the definition. While the CalWORKs program is indeed concerned with LD as it affects the person's ability to work or participate in WTW, it is important that the evaluator's conclusion of whether LD exists is based professionally accepted standards of this condition, and not limited by CalWORKs. The regulations themselves address when the evaluation of LD will have an impact on WTW participation or plans." (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

3. Comment:

**"The Definition of Learning Disabilities in § 42-70.2(2) Must Be Revised to Avoid Unintended Discrimination.**

"In our comments on the previous version of the proposed regulations, we expressed our deep concerns regarding the regulations' definition of learning disabilities (NLS comments at pp. 2-3) [Part f, Comment 3]. We are especially troubled by paragraph 3 of Section 42-701.2(2), which requires that participants' disorders 'interfere with the participant's ability to obtain or retain employment or to participate in welfare-to-work activities' in order to be qualified as learning disabilities. The incorporation of this language in the definition of a learning disability raises significant problems. DSS needs to distinguish between the definition of a learning disability and the follow-up question of whether such a disability impacts welfare-to-work participation.

"Furthermore, this definition raises serious legal issues because it diverges from the definition of disability in the ADA. The ADA defines a disability as 'a physical or mental impairment that substantially limits one or more of the major life activities of

such individual' (42 U.S.C.A. § 12102(2)). Learning and reading are considered to be major life activities (29 C.F.R. § 1630.2(i)). Thus, if a participant has a mental impairment that substantially limits her ability to learn yet does not interfere in her ability to participate in welfare-to-work activities, she would be disabled under the ADA but considered not to have a learning disability by CalWORKs.

"This divergence in definitions could raise serious problems because Title II of the ADA prohibits public entities such as the Department of Social Services (DSS) from discriminating against the disabled (42 U.S.C.A. § 12131(1)). DSS is therefore required to avoid discrimination against disabled participants and to provide them with reasonable accommodations. If DSS fails to identify all participants who meet the ADA disability standard as learning disabled because of a flawed definition of learning disabilities, there is no way to ensure that all participants who are disabled under the ADA receive required reasonable accommodations.

"The concern that DSS will fail to identify as disabled participants who qualify for ADA protections is not theoretical. Our experience has demonstrated that using this definition of learning disabilities can result in a finding of no learning disability, denying participants who meet the ADA disability standard their right to accommodations. This happens because, in our experience, CalWORKs contracted evaluators consider the impact on ability to obtain employment to be an essential part of the determination of whether a learning disability exists. One client was previously diagnosed with a learning disability by a community college. Despite finding that she had severe cognitive delays, when a CalWORKs evaluator evaluated her, he pointed to her ability to do waitressing jobs as evidence that she was not learning disabled!

"In the Final Statement of Reasons, the Department states that 'as intended by the advisory workgroup, these sections regarding learning disabilities are to clearly connect the existence of a learning disability to a recipient's ability to participate in CalWORKs welfare-to-work activities or to obtain or retain employment' (Statement at p. 29) [Part f, Response 2]. We agree with DSS that it is important to consider what impact a participant's learning disability has on potential employment. However, we believe the consideration is appropriate only in determining what accommodations, if any, are necessary for the participant to succeed in welfare-to-work activities. Incorporating this consideration into the evaluation results in a definition that will inevitably fail to identify as learning disabled participants who are legally entitled to reasonable accommodations. We recommend deleting the third paragraph entirely to eliminate these problems.

"Alternatively, DSS should clarify that there are three steps in the definition. First, an evaluator must determine if a participant has a learning disability using standardized testing instruments. Only after that determination is made should the evaluator reach the second step and determine if the learning disability interferes with participation in welfare-to-work activities. If the learning disability does interfere, then the evaluator should consider the third issue, what accommodations are required. This clarification alone would greatly improve the current situation." (NLS)

Response:

The comment is outside the scope of the 15-day renotice changes.

Sections 42-722.11 and .12

4. Comment:

"1) We reiterate our concern that counties log that the screening information was provided. The Department's concern that this information may be provided in a group setting is not justified. Counties must already log when a person attends an appraisal or other WTW appointment in order to determine compliance with the WTW program. Those counties not providing the offer to screen at the initial appointment can provide the screening information at several different points. Counties should document when this information is actually provided.

"2) Additionally, to clarify our prior comment, even when the screening is offered at the first contact, the county must provide information about the screening. (Currently, there is a requirement in MPP §42-722.12 to explain what the screening is *only* if the screening is offered subsequent to the first contact.) As written, counties offering the screen at the first WTW contact are not required to explain what the screening is. People need a context in which to decide whether to take the screening, at whatever point the county offers it.

"3) Finally, the regulations should mandate that counties standardize the information they provide to participants by using the LD script attached to ACL 02-64. This will ensure that participants are provided with consistent and correct information and can be used by staff who are not trained on the screening or on learning disabilities issues. The information listed in 42-722.121 is useful, but doesn't ensure standardized information." (LSNC)

Response:

In response to part one of the comment, the Department is not amending the section to require a county to document that learning disabilities information was provided to the participant. Section 42-722.12 is being amended to require counties to provide the information, both verbally and in writing. Many counties will meet this requirement by providing the information in group settings. Such settings make it impractical to document the provision of materials to participants. However, to ensure that recipients receive adequate information, the Department added Section 42-722.121 to specify the information that counties must provide to participants.

The Department agrees with the part two of the comment and is amending Section 42-722.12 to clarify that all counties must provide the information about screening and evaluation at the first welfare-to-work contact, even if the screening and evaluation is not offered.

In response to part three of the comment, the Department is not amending this section to require that the State provide and use the information on the script attached to All-County Letter 02-64, since no changes are necessary. As noted in our initial response on this matter, the Department has added Section 42-722.121, which incorporates information contained in the script as part of the minimum information that counties must provide to clients. The information to be provided under Section 42-722.121, in fact, exceeds the information contained in the script.

New Section 42-722.121 (Post-hearing Modification - Added)

5. Comment:

"1) The information provided to participants needs to include the statement that people with LD have a right to reasonable accommodations.

"2) In addition, we continue to recommend that the counties provide information on the nature of the evaluation, currently subsection (g), only when providing a referral to the evaluation. Though advisable to provide information about the evaluation, so the waiver is informed, this should only be done for those much smaller number of individuals who will be getting a referral to the evaluation.

"In rejecting our prior comment on this, the Department cites the intent of the Workgroup. This is not correct. At the workgroup, it was I who proposed that the information about the screen and the evaluation be provided, so that any waiver be knowing and informed. In making this proposal, I stated the information should be provided at the relevant point, i.e. screening information prior to the offer to screen, and evaluation information prior to referring to the evaluation. The Advisory Committee only discussed and agreed that participants should make a knowing waiver, but did not specifically address the timing of the provision of this information, other than the information about the screen. The subgroup developing the "script" of information about the screen, of which I was a member, did *not* include information about the evaluation. My recollection is that this issue was discussed and specifically rejected as being too confusing, and potentially *dissuasive* of taking the screen.

"Providing information about the length and nature of the *evaluation* prior to offering the *screening* may inappropriately lead to more waivers of the screening.

"3) We are also concerned that counties not merely use the language about the evaluation listed in the regulations. These terms are technical, and will not be meaningful to participants." (LSNC)

Response:

In response to part one of the comment, the Department is not amending this section, as Section 42-722.121(d) clearly requires the counties to inform participants of their right to receive accommodations, once a learning disability is identified.

In response to part two of the comment, the Department is not amending the section to state that learning disabilities evaluation information only be provided to individuals who are being referred to the evaluation. The Department added Section 42-722.121, which only requires that the county provide minimal information regarding the screening and evaluation. However, counties should not be precluded from providing additional information, if requested by an individual.

In response to part three of the comment, the Department is amending Section 42-722.121(g) to make the terms in the regulation more user-friendly.

New Sections 42-722.121(h) and .531(d) (Post-hearing Modification - Added)

6. Comment:

"The regulations should be amended to make it clear that recipients have a right to a hearing if they disagree with the evaluation– not just the county's actions, pursuant to WIC 11327.8." (LSNC)

Response:

In response to the comment, the Department is not amending this section to clarify that recipients have the right to a hearing if they disagree with the evaluation pursuant to Welfare and Institutions Code Section 11327.8. Existing Section 42-721.51, regarding state hearings, already protects the participant by allowing the person to appeal the results of the evaluation.

Section 42-722.15 (Post-hearing Modification - Deleted)

7. Comment:

"1) The republished regulations delete what was formerly MPP § 42-722.15. That section should have been left in. Although the counties should have *initially* offered the screen to the current caseload, these remain relevant and necessary points at which the screen should be *reoffered* to anyone who previously declined one. The statute states that the counties must refer participants to an evaluation anytime they suspect LD. Anyone not making satisfactory progress, or in the good cause/sanction/cure process should be reminded of the screen and/or given an opportunity for an evaluation.

"2) This would also be a good location to include a handbook section listing common reasons to suspect LD." (LSNC)

Response:

In response to part one of the comment, the Department is not reinserting this section as it was never intended that the learning disabilities screening and evaluation process

require counties to reoffer the screening and evaluation to participants who declined them. However, the regulations allow participants who want to be screened or evaluated at a later time to request a screening and/or evaluation at any time. People failing to make satisfactory progress still are protected during the good cause determination and sanctioning processes under Sections 42-722.71 and .73. Additionally, existing Section 42-711.58 requires that a participant with a suspected learning or medical problem, as determined by information received during appraisal or assessment, or by lack of satisfactory progress in an assigned activity component, shall be referred to an evaluation.

The Department is not including a handbook section that lists characteristics and manifestations of individuals with possible learning disabilities, given that the listing of traits and behaviors are already available in various documents that counties use to train their staff.

Renumbered Section 42-722.15 (Post-hearing Modification - Renumbered from Section 42-722.16.)

8. Comment:

"1) MPP § 42-722.414 states that a LEP recipient may request to go directly to a professional LD evaluation. However, nowhere in the regulations is it required that the counties *inform* recipients that they have this option. Section 722.15 should include a provision that the county must inform LEP recipients that there is no validated screening tool, and that they have the right to request a direct referral to a professional LD evaluation.

"2) As written, this section implies that the 'screening' is complete if the county 'observes' or 'discusses' LD the LEP participant. The section needs clarification that, unless the county makes a referral to an LD evaluation based upon observation of or discussion with the participant, the 'screening' is not complete until the county either offers the participant the opportunity to go directly to an evaluation or has a person professionally trained to identify LD conduct a culturally appropriate review of a symptom inventory in the participant's primary language.

"To prevent discrimination, LEP participants must have equal access to a screening procedure. Although discussions and observations by a county worker may indicate a 'suspicion' of LD, they are not screenings. In the absence of a validated screen, only an LD professional can make the assessment whether a further LD evaluation would be appropriate.

"3) The Department has stated that the definition of 'screener' at MPP §42-722.311 addresses the issue of who may 'screen' LEP recipients for LD, but further clarification is needed. MPP §42-722.31 defines who is appropriate to administer the *screening tool*. With LEP participants, no tool is used. The state therefore needs to explain who is qualified to make a determination of probable LD for

LEPs, so counties don't think that someone qualified to administer the validated English screening tool is automatically qualified to screen for LEP participants for LD.

"4) Related to the above, the counties cannot ask LEP participants to sign the LD waiver, unless the have offered a screening or evaluation by an LD specialist.

"We therefore propose the following language:

".165 For limited-English proficient CalWORKs welfare-to-work participants for whom no recognized and validated learning disabilities screening tools exist, as required by Section 42-722.42, the county must determine whether a potential learning disability may exist~~s~~. The county may refer LEP individuals suspected of potentially having LD directly to an evaluation, ~~though~~ based on discussions with, and/or observations of, the participants~~.~~ Otherwise, the county must offer LEP participants a Learning Disabilities screen performed by a qualified LD professional, who can conduct a culturally appropriate clinical interview.

"a) Such an interview must include a review of a diagnostic symptom inventory with the participant in the person's primary language (directly or with a competent interpreter).

"We also recommend inserting a Handbook section referencing the Brief Symptom Inventory (BSI), and the Cognitive Processing Inventory (CPI), as examples of inventories that could be used." (LSNC)

Response:

The Department agrees with part one of the comment and is adding Section 42-722.121(i) to Section 42-722.121, which lists the minimum information counties are required to provide participants regarding learning disabilities screening and evaluation, to include that counties must inform limited-English proficient participants that they can request a referral to an evaluation when there is no screening tool in their primary language.

In response to part two of the comment, the Department reiterates what it said in our response to a similar comment in the earlier round of comments. At this time, recognized and validated learning disabilities screening tools in languages other than English do not exist. Therefore, the sections pertaining to determining if limited-English proficient individuals may have a potential learning disability were developed to assist counties in making the best determination possible, given the limitations.

In response to part three of the comment, the Department's position continues to be that an amendment is not necessary, since it is the county's responsibility to establish policies regarding a screener's qualifications and the use of bilingual staff is governed by Division 21. Furthermore, these and other existing sections also protect participants

by providing them with the right to appeal any program requirement and assignment and county action with which they disagree.

The Department is not amending the section to include information referencing the Brief Symptom Inventory and the Cognitive Processing Inventory as examples of inventories that could be used. Counties already have this information from the learning disabilities training provided by Payne and Associates.

Renumbered Section 42-722.153 (Post-hearing Modification - Renumbered from Section 42-722.162.)

9. Comment:

"Concern: **If a participant is non-English speaking, currently manufactured test instruments do not accurately identify academic achievement in all languages, and therefore cannot accurately determine if a learning disability exists.** Even such tests as the Bilingual Verbal Ability Test (BVAT) does not determine math levels. In order to identify a learning disability, all academic areas (minimum of reading, math, spelling) need to be reviewed. For example, mathematical symbols for many languages differ, and therefore testing is difficult unless normed, validated tests are available.

"However, in order to accommodate non-English speaking participants, many may benefit from a formal vocational evaluation, similar to that provided to the Department of Rehabilitation. Non English speakers are significantly more difficult to evaluate and generally require hands-on work sample evaluation in addition to individualized observation and discussion, thus a three day recommendation. These evaluations (utilizing objective assessment instruments) would identify employment strengths and barriers (academics, aptitudes, cognitive ability, hands-on capabilities, interests, etc.) in order to assist the Case Manager and participant with determination of employment goals and employment plan recommendations.

"Recommendation: Change the phrasing to state:

> "'If the county determines that a limited-English proficient CalWORKs welfare-to-work participant may have a potential learning disability, the county must refer the participant to a learning disabilities **or an objective vocational evaluation** in accordance with Section 42-722.4.'" (FACTS)

Response:

The comment is outside the scope of the 15-day renotice changes.

New Section 42-722.16 (Post-hearing Modification - Added)

10. Comment:

"Section .16 should be clarified to explain how counties 'address' the other potential health and behavioral health issues. This can be done by adding the phrase 'by referring participants for an appropriate evaluation' to the end of the existent language." (LSNC)

Response:

The Department is not amending this section in response to the comment given that the regulation is quite clear that the county must help participants deal with health-related issues first.

Renumbered Section 42-722.2 (Post-hearing Modification - Renumbered from Section 42-722.3.)

11. Comment:

"We remain concerned that there still is no regulation discussing *deferring* (versus refusing) a screening or evaluation. The regulations should clarify that counties should not request a participant to sign a waiver when the participant has expressed the desire to try to establish some other condition *first*, such as obtaining exemption verification or a dual diagnosis, obtaining prior LD evaluation results, etc., but is not actually refusing a screen." (LSNC)

Response:

The Department agrees with this comment and is adding Section 42-722.161 to Section 42-722.16, to specify that participants referred to a health-related evaluation, prior to a learning disabilities screening, shall not be required to sign a learning disabilities screening waiver until the health-related issues are resolved and the participant subsequently declines the learning disabilities screening.

Renumbered Section 42-722.212 (Post-hearing Modification - Renumbered from Section 42-722.312.)

12. Comment:

"This section should include the information that if an LD is later identified, the participant will receive accommodations." (LSNC)

Response:

The Department is not amending this section to require that, if a learning disability is later identified, the participant will receive accommodations. The proposed change is not necessary because Sections 42-722.23 and .231 already state that participants who decline a screening and/or evaluation can request one at a later date, and if they are determined to have a learning disability, they shall be provided the appropriate services and accommodations to address the learning disability (on a prospective basis only).

Renumbered Section 42-722.213 (Post-hearing Modification - Renumbered from Section 42-722.313.)

13. Comment:

"This section (or above, in section .2 [Comment 11]) should be clarified that counties should not consider a participant to have declined a screen, and therefore they should not be asking recipients to sign a waiver, if the recipients is proceeding directly to the evaluation or if has informed the county of a pre-existing diagnosis or evaluation of LD." (LSNC)

Response:

The Department agrees with the comment and is adding Section 42-722.27 to specify that, if a participant meets the criteria in Sections 42-722.412 and .414 and is referred to an evaluation, he/she will not be required to sign a waiver of the screening.

Renumbered Section 42-722.23 (Post-hearing Modification - Renumbered from Section 42-722.33.)

14. Comment:

"As drafted, the regulations state that if a participant who declines screening later requests one, the county must provide it as soon as 'administratively possible.' The recipient's WTW activity clock should be tolled until such time as the evaluation is completed and an appropriate WTW plan developed. In several counties, it can take months to complete the evaluation process. The recipient should not be penalized for this time." (LSNC)

Response:

The Department is not amending this section to establish time frames by which the participant should be evaluated because the learning disabilities evaluators are not equally available in all counties. Therefore, the waiting time for evaluations will vary from county to county. Additionally, the changes proposed are not necessary because, if the person has not been assessed, then there is no clock. However, if the participant has been assessed and has signed a welfare-to-work plan, the regulations allow for the

readjustment of the 18- and 24-month clock, if a verified learning disability was not addressed and had an impact on the participant's ability to participate.

New Section 42-722.24 (Post-hearing Modification - Added)

15. Comment:

"1) We previously commented that Counties should be permitted to reject prior evaluations only for specific reasons. (If 1) the participant agrees to be re-evaluated; 2) a change in the individual's circumstances (such as treatment for dual diagnoses or testing that occurred when the recipient was a child); 3) the prior evaluation did not meet the standards set forth is these regulations; 4) the evaluator did not have the proper qualifications.)

"The department did create new regulatory sections permitting counties to reject prior evaluations, but then failed to address our comments for standards regarding when this can occur. The statement of reasons do not address why the Department did not accept the comment regarding standards for the rejection of prior evaluations.

"We therefore reassert our comment. Many of the tests used in the evaluation process are not subject to change upon retesting, but are time-consuming, stressful, and invasive to do. At a minimum, counties should have written standards, pursuant to MPP § 11-501.3 and ACL 00-08, and subject to approval by CDSS, on the criteria for rejecting prior evaluations by professionally qualified evaluators.

"2) This section, as written, permits the county to *not* provide accommodations for an identified disability, in violation of the ADA, when the county wants to do its own evaluation. If the recipient provides the county with verification of a learning disability, in the form of a prior LD evaluation, the county *must* provide reasonable accommodations. The county must have reasonable standards, in writing, supporting any dispute of a prior diagnosis. At a minimum, the county's LD evaluator should determine whether additional or different testing is needed, and the county should not be permitted to reject evaluations that fully meet the standards set forth is these regulations. The county must have written standards for rejecting any prior evaluation, as an area of discretion affecting WTW participation.

"3) Related to the above, the county cannot condition a waiver of rights, by asking the recipient to sign a LD accommodation waiver, while disputing the prior LD evaluation. This is particularly important, as subsection .25 excludes from the waiver process only those recipients whose previous evaluation the county accepts. As drafted, the regulation forces a recipient to sign a waiver, without requiring counties to have standards for rejecting the previous evaluation.

"4) There is no provision requiring counties to notify the person on an adequate Notice of Action, of their right to challenge the rejection of the prior evaluation. Subsection .25 should be rewritten to provide that." (LSNC)

Response:

In response to parts one, two, and three of the comment, the Department maintains its position that a county has the right to question the validity of any prior learning disabilities evaluation that is presented by an individual. Upon examination of the prior evaluation report, the county has the option to accept all or part of the evaluation and provide the necessary accommodations, or to refer the participant to a learning disability evaluation for a second opinion or to obtain additional information. Finally, counties have previously been instructed that, in areas where they have program flexibility and operational discretion, they must develop written policies and procedures to ensure equitable treatment of clients.

In response to part four of the comment, the Department is not requiring that counties issue a notice of action to inform a participant that it is not accepting a prior evaluation. Existing regulations already allow for appeals by clients who disagree with a county decision to not accept all or part of the evaluation. However, the Department is adding Section 42-722.26 to require that counties, at a minimum, verbally inform the participant of such a decision.

16. Comment:

"**Standards Need to be Developed Regarding the Deference Given by CWDs to Pre-Existing Learning Disability Evaluations.**

"**A. The lack of standards in § 42-722.24 will result in arbitrary and capricious decisions by CWDs.**

"Section 42-722.24 outlines the options open to the CWD should the participant have a pre-existing learning disability evaluation performed by an evaluator outside the CalWORKs welfare-to-work program. It allows the CWD to accept all, part, or none of the evaluation and permits the CWD to refer the participant to another learning disabilities evaluation.

"We agree that the CWD should be able to accept a recent competent learning disabilities evaluation in lieu of a new, duplicative, evaluation. However, we do not agree that the CWD has unlimited discretion to reject an existing evaluation and require the participant to attend a duplicative evaluation. As we explained in our previous comments (NLS comment at p. 6, paragraph 4) [Should be NLS comment at p. 7, paragraphs 2 and 3) Part f, Comment 26], this second referral would not only be a waste of time and money, it would also serve as a barrier for many with learning disabilities.

"The Final Statement of Reasons asserts that 'a county has the right to question the validity of any prior learning disabilities evaluation that is presented by an individual. Upon examination of the prior evaluation report, the county has the option to accept all or part of the evaluation and provide the necessary accommodations, or to refer the participant to a learning disability evaluation for a second opinion or obtain additional information' (Statement at p. 57) [Part f, Response 39]. This policy makes it probable that each CWD, and even individual districts within a CWD, will make different decisions about accepting previous evaluations. This would lead to a pattern of arbitrary and capricious decisions across and even within counties. Those arbitrary and capricious decisions would violate the guarantee of substantive due process outlined in the California Constitution Article 1 § 7.

"**B. DSS should adopt standards in the regulations to guide CWDs.**

"We suggest that the regulations provide CWDs with clear standards that they can use to determine whether or not to accept an existing learning disability evaluation. Such criteria would instruct CWDs to determine whether an existing evaluation is competent, complete, and timely. When presented with an existing evaluation by a participant, a CWD could have an evaluator within the CalWORKs welfare-to-work program review it to ensure that it meets the criteria for acceptance. CWDs may also have concerns about the ability of evaluators outside of the welfare-to-work program to recommend appropriate modifications and accommodations. Thus, when reviewing the existing evaluation, the CalWORKs evaluator could also determine what modifications and accommodations within the WtW plan are necessary for the participant to succeed. Our suggested criteria are listed in our previous comments (NLS comments at p. 9) [Part f, Comment 30].

"**C. At a minimum, DSS should modify the regulations to require CWDs to adopt criteria.**

"If the state declines to develop criteria to guide the discretion of the CWD in determining whether or not to accept an existing learning disabilities evaluation, it must require each CWD to develop its own criteria. These criteria should be subject to approval by the state. This process of developing and approving criteria regarding existing evaluations will ensure that the decisions made by CWDs are not arbitrary and capricious." (NLS)

Response:

Please see response to Part g, Comment 15, Paragraph 1.

Renumbered Section 42-722.412 (Post-hearing Modification - Renumbered from Section 42-722.512.)

17. Comment:

"This section should include 'having a previous LD evaluation' as a reason that participants go straight to evaluation." (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

New Section 42-722.414 (Post-hearing Modification - Added.)

18. Comment:

"The screening tool has false negatives. It is therefore critical that any recipients who believe they would benefit from an evaluation, and so requests one, should also be referred. Counties must inform recipients of their ability to request a referral to an evaluation.

".414 Are limited-English proficient and request a referral to a learning disabilities evaluation, if no validated screening tool exists in their primary language.

".415 Who suspect that they have a Learning Disability, although not receiving a positive result on the Learning Disabilities screening, and request a referral to an evaluation.

"We also recommend that the regulations contain a Handbook section that lists learning differences that would lead one to suspect LD, so the county workers have a context in which to make a referral to an LD evaluation." (LSNC)

Response:

In response to the first part of the comment regarding limited-English proficient individuals, the Department is adding Section 42-722.121(i) to Section 42-722.121 because of the special circumstances of this population. However, the Department is not amending this section in regards to individuals who do not receive a "positive result on a learning disabilities screening." Section 42-711.58 already requires that a participant with a suspected learning or medical problem, as determined by information received during appraisal or assessment, or by lack of satisfactory progress in an assigned activity component, be referred to an evaluation. This could include individuals who do not “receive a positive result” on the learning disabilities screening, but express that they have, and exhibit characteristics of having, a learning disability.

In response to the comment regarding learning disabilities indicators training materials, please see response to Part g, Comment 8, Paragraph 4.

Renumbered Section 42-722.44 (Post-hearing Modification - Renumbered from Section 42-722.54.)

19. Comment:

"This section should indicate that the assessment couldn't take place until the *results* of the evaluation are available. As written, the assessment could take place after the evaluation meeting but before results are available. This would defeat the purpose of incorporating the participation finding and accommodations recommendations into the assessment and WTW plan development." (LSNC)

Response:

The Department is amending this section to clarify that the results of the evaluation are incorporated into the assessment and welfare-to-work plan.

New Section 42-722.441 (Post-hearing Modification - Added.)

20. Comment:

"Individuals who missed their scheduled LD evaluation should not be deemed to have declined the evaluation and be required to resume the WTW assessment process, if they had good cause for missing their appointment and/or who have requested a rescheduled appointment. We therefore propose the following modification to this regulation:

> "If the individual initially agrees to an evaluation but fails to attend the evaluation without good cause or a request to reschedule the interview, he/she will be deemed to have declined the evaluation and the assessment process will resume without benefit of the evaluation. The individual shall not be sanctioned as described in Section 42-722.22 for failure to attend the evaluation and shall be able to request a screening and/or evaluation at a later time as described in Section 42-722.23." (LSNC)

Response:

The Department agrees with the comment and is amending this section to include the language "without good cause" after "but fails to attend the evaluation."

Renumbered Section 42-722.46 (Post-hearing Modification - Renumbered from Section 42-722.55.)

21. Comment:

"Concern: There are two concerns with this section.

"1. **Currently under this section, individuals without proper educational qualifications (for example, high school graduates) may perform learning disability evaluations. Your phrasing of 'trained qualified learning disability evaluation professionals' is very subjective, as almost anyone can substantiate some 'training' and 'qualification'.** Some, but not all test publishers require a Masters Degree in a counseling related field in order to interpret validated learning disability testing instruments. (For example, in order to interpret the Woodcock Johnson III, an MA or MS is required.) Even the January 22, 2004 Notice of Proposed Changes in Regulations of the California Department of Social Services (CDSS) – Section 42-722.46 et seq. does not specify the necessary Masters Degree.

"Recommendation: Phrasing for this section should be as follows:

"'Counties must use trained, qualified learning disability evaluation professionals **with a minimum of a Masters degree in counseling or psychology related field** who use recognized and validated learning disabilities evaluation tools to identify learning disabilities and to determine the appropriate accommodations for individuals with learning disabilities." (FACTS)

Response:

The comment is outside the scope of the 15-day renotice changes.

22. Comment:

"The regulations need to define 'qualified learning disabilities evaluation professionals.' ACL 01-70 discusses this, but the regulations never provide a definition. This is crucial, because unless the person is certified, as applicable, to administer the relevant tests and professionally trained to evaluate the test results, the evaluation will not be adequate. The evaluator must also be experienced testing adults, as this is a very different area that testing children." (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.462 (Post-hearing Modification - Renumbered from Section 42-722.552.)

23. Comment:

"This section needs to indicate that even if the CWD contracts for evaluations, the CWD is still responsible for determining the contractors utilize qualified professionals to perform the testing and evaluation reports, and monitoring the evaluations to ensure the report meet the regulatory standards." (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

New Section 42-722.464(c) (Post-hearing Modification - Added.)

24. Comment:

"This section needs to clarify that vocational interest information, if gathered, can be used ONLY to assist in the development of the WtW plan and CANNOT be used in the determination of whether an LD exists." (LSNC)

Response:

The Department is not amending this section in response to the comment. The intent of this section is that vocational interest information be used specifically for the development of the welfare-to-work plan. It is up to the professional learning disabilities evaluator to determine if any test based on vocational interest could determine a learning disability.

Renumbered Section 42-722.465 (Post-hearing Modification - Renumbered from Section 42-722.554.)

25. Comment:

"We recommend the following change to the section listed below:

"***Manual Section 42-722.465***

"***If no recognized and validated evaluation tools exist in the participant's primary language, the learning disabilities evaluation professional, utilizing appropriate bilingual and/or bicultural staff, as necessary, must to the best of staff ability determine if a learning disability exists through:***

"***(a) The use of other evaluation tools that may provide pertinent information.***

"***(b) <u>Discussions appropriately tailored to the individual's cultural background with, and/or observations of, the participant; and/or</u>***

"*We continue to strongly support deleting the language in this section regarding evaluations for non-English/non-Spanish participants since there are no validated or recognized tools at this time. This rqeuirement could result in providing different levels of service, which could result in legal action against the County. Any applicable procedure required for one language group should be required for all.*

"*In the absence of validated evaluation tests/instruments for non-English/non-Spanish speaking participants, we are requesting further guidance from CDSS.*" (LA DPSS)

<u>Response</u>:

The Department is not amending this section in response to comment as it is the same as the screening issue addressed in the response to Part g, Comment 8, Paragraphs 1 and 2.

26. <u>Comment</u>:

"The Department needs to delete the vague and unquantifiable phrase 'to the best of staff ability' in describing an LD evaluation for LEP participants. The regulations should be clear that determining LD in LEP individuals is not a factor of the individual evaluator's competency, but rather of the limitations inherent in making this determination without standardized testing. We therefore recommend the following changes:

"If no recognized and validated evaluation tools exist in the participant's primary language, the learning disabilities evaluation professional, utilizing appropriate bilingual and/or bicultural staff, as necessary, must ~~must to the best of staff ability~~ determine if a learning disability is likely to exist~~s~~ through:

". . .

"(b) An interview assessment, reviewing standard LD symptom inventories, ~~Discussions~~ appropriately tailored to the individual's cultural background with, and~~/or~~ observations of, the participant; and/or" (LSNC)

<u>Response</u>:

Please see response to Part g, Comment 8, Paragraphs 2 and 3.

Renumbered Section 42-722.466 (Post-hearing Modification - Renumbered from Section 42-722.555.)

27. Comment:

"The regulations should state that in when the county refers the participant for an evaluation whether the recipient has another condition, that evaluation actually be provided. Otherwise, providing a referral without ensuring the individual has a means of obtaining the evaluation defeats the purpose of the statute. Example: recipients have reported being "referred" to an evaluation, in the sense that they were told to get one. The county did not provide a list of providers, or there was no method of payment (for example a mental health evaluation). Responding that evaluations are not ancillary expenses under 42-750 is not responsive to this comment." (LSNC)

Response:

The Department is not amending this section in response to comment because it is not necessary. The regulation clearly states that counties must refer the person to a professional who is licensed to diagnose the suspected impairment that may be a barrier to participation in welfare-to-work activities. If a county fails to do so, they have not completed the referral and evaluation process that is required.

Renumbered Section 42-722.5 (Post-hearing Modification - Renumbered from Section 42-722.6.)

28. Comment:

"1) This report needs to include whether the individual can participate. Welfare & Institutions Code § 11325.25(a), very specifically states evaluation is "to determine whether the individual is *unable to successfully complete or benefit from a current or proposed program assignment*." The statute requires the *evaluator* to make the determination whether the person can participate. If they can't, the county, pursuant to the exemption requirements, *must* exempt the individual.

"The Department states it rejected this comment is 'because the entire process is to determine if the individual can participate," and that "Based on the evaluation, the county will determine the participation requirement for the individual.' This is a circular statement that does not address the issue raised by the comments. Determining if a person *can* participate must obviously also include determining if they *cannot*.

"The evaluator must first determine if the individual *cannot participate*, as specified by the statute. This requires that evaluators be apprised of the fact that they are to make such a determination. To do so, evaluators must know the standards of participation.

"2) It makes no sense to say that the 'existing procedures' in 42-712 for exemption covers the concerns about inability to participate. The county is supposed to

directly get this verification in the form of the evaluation, *according to the statute*. How can the participant verify the exemption, when the person best suited to determine whether the Learning Disability significantly interferes with the person's ability to participate, is not informed that the evaluation should contain this information? It is inappropriate and a waste of resources to exclude this information from the evaluation, then require the recipient to verify this information.

"The regulation should therefore be changed to read:

"'If the evaluation identifies the existence of a learning disability, and the evaluator determines the individual can participate in WTW, the welfare-to work assignment will be modified to provide appropriate services and accommodations to address the learning disability on a prospective basis only.'" (LSNC)

Response:

The Department is not amending this section in response to the comment, as the entire process is to determine the extent to which the individual can participate. Sections 42-712 (Exemptions from Welfare-to-Work Participation) and 42-713 (Good Cause for Not Participating) already provide protection to all participants who document that they meet the exemption and good cause criteria for not participating.

The county must provide the evaluator with relevant information that it possesses, and that is necessary, for the evaluator to determine if the individual has a learning disability. The evaluation is an independent process to gather objective data of the individual's capabilities and weaknesses and determine its impact on the individual's ability to become employed or attend a welfare-to-work activity. Based on the evaluation, the county will determine the participation requirement for the individual.

Additionally, the information requested under this comment already is required by Section 42-722.516(b).

Renumbered Section 42-722.51 (Post-hearing Modification - Renumbered from Section 42-722.61.)

29. Comment:

"This list needs to state that a 'diagnosis of LD, if one exists' is core information that must be included in the LD evaluation report." (LSNC)

Response:

The Department is not amending this section because it is not necessary, as the information contained in Section 42-722.516(a) clearly specifies that the severity of disability is core information that must be included in the report.

Renumbered Section 42-722.516 (Post-hearing Modification - Renumbered from Section 42-722.616.)

30. Comment:

"This section needs to [sic] a subsection regarding whether the individual can participate in WTW, for the reasons set forth in our comments to section .5." (LSNC)

Response:

Please see response to Part g, Comment 28.

Renumbered Section 42-722.523(a) (Post-hearing Modification - Renumbered from Section 42-722.623(a).)

31. Comment:

"The republished regulations add the phrase 'as necessary' to describe when a county should consult with an LD evaluator to determine employment goals, if this information is not contained in the original report. This consultation must *always* be required. If the evaluation is silent on the issue, the county needs to discuss its post-assessment recommendations with the evaluator, to ensure they are appropriate. Additionally, the LD evaluator needs to discuss with the county the accommodations that would be appropriate for *the particular assignment*. The evaluator may not be qualified to determine employment goals, but certainly is vital to determining whether the LD would impact the goals identified by the county. We therefore recommend deleting the phrase 'as necessary.'" (LSNC)

Response:

The Department is not amending this section in response to this comment. Counties should only consult with the evaluator, as necessary, because the core information that must be submitted in the evaluation report, in accordance with Sections 42-722.516(b) and (f) must include: 1) the areas impacted by the learning disability, including employment and participation in welfare-to-work activities; and 2) the range of recommended accommodations/assistive technology to be included in the participant's welfare-to-work plan.

Renumbered Sections 42-722.53 and .54 (Post-hearing Modification - Renumbered from Sections 42-722.63 and .64.)

32. Comment:

"**DSS Should Strengthen the Language in § 42-722.532 and .532 Regarding the Availability of Tests and Reports, Notices of Action, and AR's Access to Tests.**

"While these sections are significantly improved with respect to the right to a hearing and the availability of the evaluation report, more clarity is needed. Specifically, three issues remain unclear— the need for a Notice of Action ('NoA'), the right of the participant or the Authorized Representative ('AR') to information about what tests were administered during the evaluation and copies of the participant's test responses and results, and the confidentiality of reports.

"**DSS should require a notice of action** be issued in these situations for the reasons set out in our earlier comments (NLS comments at p. 13, paragraphs 1-4) [Part f, Comment 59]. Informing participants of their right to a fair hearing is critical and we commend DSS for including this language in sections .531(d) and .532(d). However, due process requires that a NoA be sent to the participant regarding the result of the learning disability evaluation. DSS failed to respond to this aspect of our comments in the Final Statement of Reasons (Statement at p. 68-9) [Part f, Response 59]. We urge you to require NoAs in these situations.

"**DSS should require copies of tests be provided to evaluated participants.** The Final Statement of Reasons fails to address another aspect of our previous comments— the availability to participants and their AR's of the tests administered during the learning disabilities evaluation and the participant's test responses and results (Statement at p. 71-2) [Part f, Response 66]. Our experience shows that only the evaluation report is being provided to participants, while the underlying test responses and scores are not. For the reasons stated in our initial comments, such information is crucial, especially when appealing the evaluation results. DSS should clarify that test responses and results must be provided to participants or their ARs with the evaluation report. We suggest that both .531 and .532 be modified. We also suggest a modification to 42-722.54:

> ".531(a) The county must provide a copy of the report, <u>test responses and test scores on which the report is based</u> and an explanation of the evaluation results to the participant.
>
> ".532(a) Provide a copy and an explanation of the evaluation report results to the participant, including <u>test responses and test scores on which the report is based and</u> any recommendations…
>
> ".54Counties must treat participants' medical records, <u>test responses, test scores</u> and written … as confidential.

"**DSS should make evaluation information available to ARs.** We are pleased that DSS agrees that all *tests and reports* are to be made available to the participant and, therefore, also to their AR. However, we believe it should be more explicitly stated. We suggest:

> ".541 Counties must obtain . . . to share this information with individuals, <u>including the participant's Authorized Representative</u> . . ." (NLS)

Response:

The Department is not amending this section in response to part one of the comment. Participants are adequately informed via other welfare-to-work documents, explaining their rights and responsibilities, welfare-to-work plan, or welfare-to-work plan changes and program handbook that they have the right to appeal any county action with which they do not agree. Additionally, as required in Section 42-711.522(c)(4), information regarding the right to request a state hearing must be provided to recipients in writing during the welfare-to-work appraisal process.

In response to parts two and three of the comment, the Department maintains its position that Section 42-722.531(a) requires counties to provide a copy of the report and an explanation of the evaluation results. Section 42-722.541 clearly states that the evaluation report can be released, upon the participant's written consent, to outside parties, which would include authorized representatives. However, the Department will not amend this section to require the release of tests or scoring sheets, as these evaluation tools are proprietary and are generally not released by the qualified professionals who conduct the evaluations.

Renumbered Section 42-722.531(a) (Post-hearing Modification - Renumbered from Section 42-722.631(a).)

33. Comment:

"Concern: The latest change requires that all participants be given a copy of their learning disability evaluation report. For many participants, this report will be damaging to their self esteem, progress in school, and self perception of their ability to return to work. The report documents not only intellectual capabilities, but negative worker traits, domestic abuse, mental issues, substance abuse, sexual abuse, etc. **This learning disability evaluation report falls under the same protection rights as a psychological report from a psychiatrist, which allows information to be disseminated to the participant solely by a trained case manager.** Providing a copy of the report to the participant without a specific request from the participant will more than likely lead to unnecessary legal actions, unnecessary conflict with their case worker, and misinterpretation of test results.

"Recommendation: Phrasing for this section should be more in accordance of the prior instructions of the All County Letter 01-70, which stated that participants that are determined to be learning disabled would be given a copy of the findings of the disability, and the list of reasonable accommodations suggested by the evaluator.

"Therefore, our recommended phrasing is as follows:

> "'The County must provide an explanation of the evaluation results to the participant. If the participant is identified as learning disabled, then they will be given a copy of the findings indicating they are learning disabled as well as a listing of the reasonable accommodations identified by the evaluator.'" (FACTS)

Response:

In response to this comment, the Department is not amending this section. This section was amended earlier in response to advocate groups that argued that a copy and explanation of the evaluation report and test results should be provided to all participants. Counties must receive the learning disability information to be able to assess an individual and refer him/her to welfare-to-work activities appropriately. Individuals must receive the information to determine whether the county's actions are appropriate (i.e., assignments are in accordance with their skills and needs).

34. Comment:

"This section needs to state that the copy of the report provided to the participant must include the tests and test scores from the evaluation." (LSNC)

Response:

Please see response to Part g, Comment 32.

Renumbered Section 42-722.532 (Post-hearing Modification - Renumbered from Section 42-722.632.)

35. Comment:

"This section should be changed to clarify that these steps only apply to non-exempt recipients with LD, as follows:

> "If the learning disabilities evaluation report establishes that the participant has a learning disability, that is not a basis for exemption pursuant to 42-712, that interferes with obtaining or retaining employment or participating in a CalWORKs program, the county must:'" (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.532(a) (Post-hearing Modification - Renumbered from Section 42-722.632(a).)

36. Comment:

"This section needs to state that the copy of the report given to the participant must include the tests and test scores from the evaluation." (LSNC)

Response:

This comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.532(b) (Post-hearing Modification - Renumbered from Section 42-722.632(b).)

37. Comment:

"1) This section must make clear that once an accommodation is identified, it be available throughout all WTW services, and is not just limited to the provision of the WTW activity. For example, the WTW worker must provide necessary accommodations when communicating with the participant.

"2) We also request that the Department issue regulations regarding accommodations in other aspects of the CalWORKs program, other than WTW, since it is declining to do so as part of this regulation packet. At a minimum, the state must issue an ACL clarifying that once a recipient is diagnosed or evaluated as having a Learning (or other) disability that requires accommodations, the county must note what accommodations are appropriate in other aspects of the program other than WTW. For example, currently, counties do not appear to have a regularized process to communicate the need for accommodations throughout the receipt of Social Services. If a WTW participant requires oral vs. written instructions, this applies not only to the WTW activity provider, but also to the WTW worker, *and* the eligibility worker (if different), the food stamp worker, etc." (LSNC)

Response:

This comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.532(c) (Post-hearing Modification - Renumbered from Section 42-722.632(c).)

38. Comment:

"1) This section should be followed by a handbook section listing basic principles from the ADA regarding providing accommodations, such as that all accommodations should be individualized and there are no 'standard accommodations'."

"2) In our prior comments, we requested that the regulations state that counties cannot change the recipients assessed employment need (without their consent) based *solely* on a finding of LD, when the person could participate in the identified activity or employment goal with an accommodation.

"The Department appears to have rejected this comment because 1) Division 21 prevents discrimination, and 2) modification of a plan in accordance with the

learning disability evaluation would not be discrimination, as any new activities assigned would still have to be consistent with the individual's assessment. We believe that the Department did not understand the comment.

"What we are concerned about is the *county* changing the employment goal, instead of providing an accommodation, particularly when the LD report does not address employment goals. As the regulations are drafted, after receiving the LD evaluation, the counties can reassess the individual. Counties need specific information that changing an assignment, *instead of providing an accommodation*, is a form of discrimination. This change in activity may not be addressed in the evaluation report, which may just state that the person has LD and needs accommodations. The fact that Division 21 lists prohibited activities is not sufficiently clear or specific for counties to understand how it applies in this specific circumstance.

"We made our comment in response to repeated reports of workers stating that since the recipient has LD, she should work and not receive training, when training was the assessed goal. We have also heard of workers excluding the option of training for those with LD, when getting the evaluation prior to developing the first WTW plan.

"A handbook section providing an example, such as the one given in our prior LD comments, would be helpful." (LSNC)

Response:

In response to part one of the comment, it is not necessary to amend this section, as Section 42-722.516(f) clearly provides that accommodations are provided on an individual basis.

The Department is not amending this section in response to part two of the comment. This language is quite clear that many steps must take place (such as the previous assessment, the learning disabilities evaluation, discussions between the county and the participant, etc.), and the results be taken into consideration, before modifications to welfare-to-work activities occur. It is anticipated that most cases will not require a welfare-to-work modifications. However, counties must have flexibility to make necessary changes since there may be instances in which an individual is unable to perform the essential tasks in an assignment, even with accommodations.

Renumbered Section 42-722.54 (Post-hearing Modification - Renumbered from Section 42-722.64.)

39. Comment:

"1) We reassert our comment that the Department add a subsection clarifying that if LD evaluation is done concurrently with the assessment, the county can't start a sanction process (such as for problems attending/complying with assessment

process), until LD evaluation is completed. These problems may stem, fully or in part, from the disability, and would be good cause for the failure.

"The Department rejected this comment, stating that renumbered Section 42-722.7 informs counties not to sanction individuals when it is determined that a learning disability diminished the individual's ability to participate.

"This does not rectify our concern, which is sanctioning a recipient who is *still in* the evaluation process. For example, as drafted, a person could concurrently be given an evaluation appointment and an assessment appointment. The person may make the evaluation appointment (or be waiting for the appointment date to come up), but miss the assessment appointment. This would result in the commencement of a WTW sanction, for failing to meet a program requirement. The sanction *process* should not even be started until the evaluation determines whether the individual has LD, and if so, whether it contributed to the alleged failure.

"If there is an LD evaluation pending, the county should suspend sanction proceedings until the report is received.

"2) Add a subsection that clarifies that, post-assessment, the WTW plan should not be developed until after the evaluation is completed. Otherwise, the WTW plan may be inappropriate. Additionally, the LD evaluator's report may have a discussion of appropriate long and short-range employment goals that would be important for the development of the plan." (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.61 (Post-hearing Modification - Renumbered from Section 42-722.71.)

40. Comment:

"If the evaluator determines s/he cannot, the evaluation report should be sufficient documentation of an exemption. This section should be changed as follows:

"Unless exempt pursuant to Section 41-712, an individual with a learning disability must participate for the required number of hours as specified in Sections 42-711.41 or .42. The report of a learning disabilities evaluation professional shall be sufficient documentation to satisfy the documentation requirement of Section 42-712.442(a)." (LSNC)

Response:

The Department is not amending this section in response to the comment. The Department maintains the position that an individual is required to participate in welfare-to-work unless they meet the exemption criteria specified in Section 42-712, including verification of their inability to participate by a doctor as defined in Section 42-701(d)(2).

Renumbered Section 42-722.611 (Post-hearing Modification - Renumbered from Section 42-722.711(a).)

41. Comment:

"1) Although the Department made significant changes to this section, how and when LD qualifies as an exemption, and the use of 'supplemental activities' remains unclear. This is one of the most common sources of problems with the handling of LD WTW cases – counties just don't understand how and when an LD can be the basis for an exemption. Just recently, we had a client whose CWD told her 'We don't do that [exempt for LD]. We've also heard that if the client has LD 'enough' for an exemption, she should be on SSI.

"The regulations also need to clarify that a 'supplemental activity' is indeed an activity, and not just the provision of the accommodation. Calling an accommodation a 'supplemental activity,' although it results in a recipient only participating part time in the actual WTW activity is not an accommodation but a limitation to the WTW program. If a recipient with a physical impairment turned in verification that they could only participate 20 hours, they would be exempt. The same should be true for LD – calling the hours needed just to carry out a part-time WTW program 'supplemental' is not an accommodation, but a discriminatory limitation of program access, by giving individuals with an LD a lesser program than non-disabled individuals.

"For example, there is a difference between assessing a person as needing training, and having the person participate in a full-time training program, allowing study time as an activity in support of the full-time training, and giving someone with LD who can only take 4 units a semester (12-15 is full-time) study time as a 'supplemental activity.' The study time would be the primary activity, and it would not be supporting the training goal, as the person would never be able to accomplish that goal in the 18-24 months time and would not get the benefit of a 32-35/hour/week WTW program.

"2) The Department did not respond to our comment to clarify good cause as it relates to LD. The good cause section is for temporary conditions not expected to exceed 30 days. We hear over and over again that people have 'good cause to do fewer hours' based on the LD evaluation for reduced hours. If not clarifying through regulations, the Department should at least issue an ACL on this issue. " (LSNC)

Response:

The Department is not amending the section in response to the comment regarding supplemental activities. All activities, including supplemental activities that are identified as being beneficial for the participant, are based upon the assessment and the learning disabilities evaluation. As we stated in response to your previous comment, this regulation is not unprecedented. Section 42-711.571, which pertains to substance abuse assessment, allows welfare-to-work plans to include appropriate treatment requirements, including assignment to a substance abuse program, in addition to their other activities. Individuals with mental health issues can also participate in treatment to assist them to successfully participate in a "primary" activity, in accordance with Section 42-711.563. Furthermore, Section 42-711.581 allows counties to refer participants, based on an evaluation, including those with learning disabilities, as appropriate, to any of the following: welfare-to-work activities described in Section 42-716.111, existing special programs that meet specific needs of the participant, etc. The hours of participation in supplemental activities, including those spent in treatment, count toward the individual's 32-or 35-hour work participation requirement. For a participant to be exempt from welfare-to-work activities, the participant must meet the criteria in Section 42-712.

Renumbered Sections 42-722.71 and .74 (Post-hearing Modification - Renumbered from Sections 42-722.81 and 811.)

42. Comment:

"The Department has left in the language (subsection .71) that 'the county is to determine' whether the LD contributed to the failure. Subsection .74 attempts to deal with our prior comment regarding the county's lack of competency to make this decision, but it falls short. The following language addresses our concerns, and limits the need for involving the LD evaluator to when the professional opinion is necessary.

> ".74 .811 Unless ~~If~~ the county ~~cannot~~ determines from the evaluation report ~~if~~ that the disability contributed to the participant's failure to participate, the county will must consult with the learning disabilities evaluator or another learning disabilities specialist to make the determination." (LSNC)

Response:

The comment pertaining to Section 42-722.71 is outside the scope of the 15-day notice changes.

The Department is not amending Section 42-722.74, as it is the Department's position that it is not necessary to contact the evaluator if the county can determine from the evaluation report that the learning disability played no part in the individual's failure to participate.

Renumbered Section 42-722.71 (Post-hearing Modification - Renumbered from Section 42-722.81.)

43. Comment:

"This section needs to be clarified that *unless* CWD concludes that the LD *did* contribute to the alleged failure, the county *must* consult the evaluator, unless the county worker is a qualified learning disability professional. The CWD is not in a position to make the determination of whether the participant's disability contributed to the failure to participate, unless meeting this standard." (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.74 (Post-hearing Modification - Renumbered from Section 42-722.811.)

44. Comment:

"Concern: This section **appears to have been mistakenly dropped**, with no indication of dropping (double lined). It should be replaced.

"Therefore, our recommended phrasing is as follows:

> "'If the county cannot determine if the disability contributed to the participant's failure to participate, the county will consult with the learning disabilities evaluator or another learning disabilities specialist to make the determination.'" (FACTS)

Response:

The Department is not amending the section in response to the comment, since the Department did not delete the section and only renumbered it.

45. Comment:

"Similarly, this section needs to be modified. The CWD, even using the evaluation report, is not in a position to determine if the disability contributed to the participant's failure to participate. The CWD musty consult with an LD evaluator or specialist to make this determination in all cases." (LSNC)

Response:

Please see response to Part g, Comment 42.

New Section 42-722.75 (Post-hearing Modification - Added.)

46. Comment:

"Our prior comments requested regulatory language that accommodations be provided to the recipient *while attempting to cure* a sanction. The department's response, that the county should continue the sanction process if the if the learning disability was not a contributing factor to noncompliance, did not address our concern.

"We are seeking a provision that explains to the county that if the individual needs accommodations, for non-exempt individuals, those accommodations shall be provided during the cure process (i.e. when notifying the individual of the right to cure, during the meeting developing the cure plan, and in the cure WTW plan.) (This therefore also relates to our comment to MPP § 42-722.532(b) regarding the need to explain accommodations beyond those needed for the WTW plan itself.) " (LSNC)

Response:

Please see response to Part g, Comment 37.

Renumbered Section 42-722.814 (Post-hearing Modification - Renumbered from Section 42-722.914.)

47. Comment:

"We are shocked that the the Department does not agree that 'failing to benefit from an activity' is anothe0r [sic] trigger for resetting the WTW clock. The statute itself, 11325.25, discusses LD evaluations that review whether a person can benefit from a WTW assignment. Obviously, if an unaccommodated person did not benefit from an assignment, this is contrary to the intent of the statute (as well as anti-discrimination law which require remedies) and should be remedied. Furthermore, in all other cases in the statement of reason with this regulatory packet, the Department repeatedly referred to the intent of the LD workgroup. The LD workgroup thoroughly discussed the remedy issue, and it was the intent of the workgroup to provide the remedy when the person did not benefit from the activity, as seen in ACL 01-70.

"The term is quantifiable, but is flexible enough to be responsive to the individual's circumstances, as is required by ADA law. The current problem is that counties *ignore* the 'or benefit from' language, and use instead *only* their general 'satisfactory progress' standards. These are not sufficient to remedy for past non-accommodation. Many quantifiable circumstances constitute a failure to benefit from an unaccommodated LD. For example, a person could have failed key courses required for issuance of the degree or certificate, but not have reached a low enough overall GPA to have met the county's 'no satisfactory progress' standard.' The Department recognized that there is no authority to have a 'plan modification' of reduced hours of participation, yet that is what many counties did. Those recipients did not benefit from the activity, because they did not have a 32-35 hours/week program.

"The WTW plan is supposed to identify employment skills/goal. If you were unable to benefit from the activity, by not making timely progress towards these goals, you're not benefiting." (LSNC)

Response:

The Department continues to maintain the position that "failing to maintain satisfactory progress" is a trigger to offer a learning disabilities screening and that "failing to benefit from an activity" is not a trigger. Determining whether an individual is "failing to make satisfactory progress" can be measured through the use of objective criteria such as test scores, completion of required program components or assignments, and course grades. However, trying to determine if an individual is "failing to benefit from an activity" is much too vague of a standard in many cases.

48. Comment:

**"DSS Should Retain the Language 'or benefit from' in § 42.722.814 Regarding Retrospective Adjustment of the 18- to 24-month Clock.**

"Section 42-722.814 (renumbered) outlines the criteria that a participant must meet in order to have her 18- to 24-month clock retrospectively adjusted. Previously, the regulations required that the participant 'did not make satisfactory progress in or benefit from the welfare-to-work activities,' but the modified regulations remove the phrase 'or benefit from'. The phrase 'satisfactory progress' is not defined in state law or regulations, but is usually interpreted as requiring a participant to maintain a grade point average over a 2.0.

"The phrase 'or benefit from' cannot be removed from the criteria. First, the phrase is present in the statute. Welfare and Institutions Code § 11325.25 requires that participants 'with a suspected learning or medical problem' be referred to 'an evaluation to determine whether in the individual is unable to successfully complete or *benefit from* a … program assignment' (emphasis added). Thus, it is clear that the legislature views 'satisfactory progress in' and 'benefit from' a welfare-to-work activity to be separate considerations. For this reason, the criteria for retrospective adjustment of the 18- to 24-month clock must consider both measures of achievement.

"Second, the criteria for retrospective adjustment of the 18- to 24-month clock come from All County Letter (ACL) 01-70, which outlined the learning disability policy. The criteria in the ACL require that a participant "did not make satisfactory progress or *benefit from* the WTW activities" (ACL 01-70, p. 19, emphasis added).

"Even if the phrase were not present in the statute or the ACL, the state would need to include it in the regulations to ensure compliance with the Americans with Disabilities Act (ADA). The ADA defines an individual as disabled if they have a 'physical or mental impairment that substantially limits one or more of the major life activities' of an individual (42 U.S.C.A. § 12102(2)). Learning is considered to be a major life

activity (29 C.F.R. § 1630.2(i)). Thus, participants with learning disabilities are considered to be disabled under the ADA. Title II of the ADA prohibits public entities such as the Department of Social Services (DSS) from discriminating against the disabled (42 U.S.C.A. § 12131(1)).

"The ADA's prohibitions against discrimination on the basis of disability require that the regulations contain the phrase 'to benefit.' The ADA prohibits public entities from 'providing an opportunity to participate in *or benefit from* the aid, benefit or service that is not equal or not as effective in providing an equal opportunity *to obtain the same result or reach the same benefit*' (28 C.F.R. §§ 35.130(b)(1)(ii)-(iii), emphasis added). This requires DSS not only to offer disabled participants the opportunity to participate in welfare-to-work activities, but also to take measures to ensure that disabled participants have an equal opportunity to benefit from welfare-to-work activities as non-disabled participants.

"Ensuring this equal opportunity to benefit is possible only by retaining the phrase 'or benefit from' in the criteria to retrospectively adjust the 18- to 24-month clock of a learning disabled participant. It is easy to see how a participant could be making satisfactory progress in a welfare-to-work activity while still failing to benefit.

"For example, a learning disabled student who has trouble processing auditory information might fail a class in which the information is presented in lecture format. The same student might, however, excel in courses that present information in a written format. Thus, the student might fail a lecture course while still maintaining a grade point average over a 2.0. This student would be considered to be making satisfactory progress but would not be benefiting from her education program because of her failed courses. Without receiving a retrospective adjustment of her time clock, she would be unable to retake the courses she failed and thus could not get her educational certificate or degree.

"The Final Statement of Reasons states that the phrase was deleted from the regulations 'because the term is not quantifiable' (Statement at p. 23) [Part a, Sections 42-722.9 nd .91 et seq., Final Modification]. While our previous comments noted that CWDs needed concrete illustrations of a failure to benefit, we believe the problem can be addressed by including an explanation of what constitutes 'satisfactory progress in or benefit from' welfare-to-work activities. Failure to benefit could be demonstrated by progressing in a welfare-to-work program at a slower rate, being unable to do the assessed activity for the entirety of the required hours, or being given activities that are not related to the assessed employment goal. Providing this guidance would address the problem identified by the Final Statement of Reasons while maintaining compliance with the anti-discrimination provisions of the ADA. We suggest DSS adopt the suggested language in our previous comments (NLS comments at p. 15) [Part f, Comment 84]." (NLS)

Response:

Please see response to Part g, Comment 47.

Renumbered Section 42-722.82 (Post-hearing Modification - Renumbered from Section 42-722.92.)

49. Comment:

"Taking into account all lost time is an appropriate remedy. It is a reasonable program modification to provide more than a total of 18-24 months time WTW activity time, if it was the lack of accommodation that caused the need for extra time. For example, if accommodated, the person could have complete the WTW plan in the 18-24 timeframe. In providing the remedy, a course may not be available in the restored time. The county's failure to accommodate cannot be the basis for depriving the individual of the remedy. The Department's statement that it does not have the statutory authority to change this time frame shows a lack of understanding of what a reasonable program modification is. You cannot ask the legislature to pass a statute that says "when the counties violate anti-discrimination provisions, recipients may have whatever time is necessary to provide a remedy." It is presumed that governmental entities carry out the law, and the legislature does not provide for specific remedies to fix violations. The state statute and federal law require that when the discrimination provisions are violated, the entity must make the person whole. Additionally, whether through principles of estoppel or laches, the county is barred from depriving the person of the value of their training that they WOULD HAVE HAD if they had been accommodated." (LSNC)

Response:

The Department continues to maintain that its position is consistent with Welfare and Institutions Code Sections 11320.1(c) and (d)(1), and 11454(a)(1) and (4), which limit welfare-to-work training period to 18 or 24 months, once the person signs the welfare-to-work plan.

Renumbered Section 42-722.83 (Post-hearing Modification - Renumbered from Section 42-722.93.)

50. Comment:

"In conjunction with our comments to 42-722.2, the regulation should be changed to add 'participants without a basis for deferral who refuse to be screened…'" (LSNC)

Response:

The comment is outside the scope of the 15-day renotice changes.

51. Comment:

"As indicated above [Comment 50], people who request to defer a screening or evaluation because of a prior disability evaluations and or when the desire to defer the

screening is based on LD or other confirmed impairments, such as mental health issues, should not be affected by this limitation." (LSNC)

Response:

This comment is outside the scope of the 15-day renotice changes.

Renumbered Section 42-722.852 (Post-hearing Modification - Renumbered from Section 42-722.952.)

52. Comment:

"1) The 2nd county should not change an appropriate WTW plan, unless there is cause, such the lack of availability of the plan activity." (LSNC)

Response:

The Department is not amending this section in response to comment, as the regulation clearly explains that plans are only modified based on a thorough review of available information.

Renumbered Section 42-722.853 (Post-hearing Modification - Renumbered from Section 42-722.953.)

53. Comment:

"This section need additional language indicating that if a participant is later identified as LD, even if she refused permission for the first county to forward the report, her LD will be accommodated prospectively." (LSNC)

Response:

This comment is outside the scope of the 15-day renotice changes.

54. Comment:

"1) See our comment above [Comment 53] regarding standards for rejecting prior evaluations. The 2nd county must provide accommodations of known disabilities." (LSNC)

Response:

This comment is outside the scope of the 15-day renotice changes.

General

55. Comment:

"The Department's failure to respond to a request to de-link the definition of a Learning Disability from the need for accommodations does not reflect the intent of the LD workgroup, which was to determine the presence of a LD first *and then* the needed accommodations. This remains a fatal flaw in the regulations." (LSNC)

Response:

Please see response to Part g, Comment 1.

56. Comment:

"The Department inappropriately failed to include comments regarding reasonable program modifications, on the basis that 'there is no statutory authority.' The purpose of program modifications is to have alternatives to the program made available as an accommodation to those with disabilities, or to provide a remedy for past discrimination for failure to accommodate, to allow equal and meaningful access to the programs. Such modifications are not appropriate for statutory changes." (LSNC)

Response:

Please see response to Part g, Comment 37.

57. Comment:

"The regulations address only accommodations for plan activities. It is not clear that identified accommodations must be provided for *all* aspects of the WTW program, such as interactions between the WTW worker and the individual with LD. For example, an accommodation to provide oral instructions would apply not only to a training program, but would also cover worker communications with the participant." (LSNC)

Response:

Please see response to Part g, Comment 37.

58. Comment:

"Although the Department made changes to the section on reduced hours, supplemental activities and good cause, the regulations remain unclear. This is a frequent source of problems in the handling of LD cases, requiring additional clarification beyond the citation to existent good cause and exemption regulations." (LSNC)

Response:

Please see response to Part g, Comment 41.

59. Comment:

"The lack of standards for rejecting prior LD evaluations will result in unnecessary and inappropriate testing of recipients." (LSNC)

Response:

Please see response to Part g, Comment 15.

60. Comment:

"Although significantly improved, there remain problems with the provisions regarding the screening of LEP recipients, as noted below [Comment 61]." (LSNC)

Response:

Please see response to Part g, Comment 8.

61. Comment:

"Retroactive Adjustment of Time

"Generally, the regulations should make it clear that this remedy is available any time the county failed to screen for unknown disabilities and accommodate known or unscreened disabilities." (LSNC)

Response:

In response to the comment, the Department maintains the position that the comment is broad and appears to cover areas beyond CalWORKs welfare-to-work and learning disabilities, therefore, it is outside the scope of this regulation package.

62. Comment:

"We feel the regulations indicate a fundamental lack of understanding by the Department of the requirements of the Americans with Disabilities Act ('ADA'). This lack of understanding is reflected in the flawed definition of Learning Disabilities, which creates a unique CalWORKs definition of learning disabilities that does not conform to the ADA. The divergence in definitions means that participants who are considered disabled by the ADA and thus entitled to accommodations will not be considered disabled by the CalWORKs program. Additionally, the accommodations contemplated by the proposed regulatory package fall far short of the ADA's requirements. To comply with the ADA, accommodations must be available in every

aspect of the CalWORKs program, not simply to help participants complete welfare-to-work activities. The lack of guidance to CWD regarding providing appropriate accommodations is also troubling, given our experience that suggests that CWDs are unprepared to make accommodations without additional information. The regulations also fail to mention that learning disabled participants should be eligible for an exemption from welfare-to-work participation on the basis of their disability. Information about exemptions must be included as this is often the most appropriate accommodation for a learning disabled participant." (NLS)

Response:

This comment is outside the scope of the 15-day renotice changes.

63. Comment:

"The proposed regulations also provide insufficient guidance to CWDs regarding implementation of learning disability policies. For example, CWDs are given no guidance on how to exercise their discretion to accept or reject pre-existing learning disability evaluations. This lack of criteria is likely to result in arbitrary and capricious decisions by CWDs. Additionally, the phrase "failed to benefit from" has been deleted from the criteria used to determine whether a participant is eligible for a retrospective adjustment of her 18- to 24-month clock. Deleting this phrase will only lead to greater confusion and arbitrary decision making. After this phrase is reinserted, DSS must also provide CWDs with guidance on how to interpret the phrase. Given the importance of the retrospective adjustment as a reasonable accommodation, it is essential that CWDs know to evaluate a participant's eligibility for that accommodation." (NLS)

Response:

In response to part one of the comment pertaining to counties acceptance or rejection of a previous evaluation please see response to Part g, Comment 15, paragraph one.

In response to part two of the comment pertaining to the deletion of the phrase "failing to benefit from" please see response to Part g, Comment 47.

64. Comment:

"As advocates we are also concerned that some critical aspects of our earlier comments on the availability of tests and reports were not addressed in DSS' revised regulations or the Final Statement of Reasons. As discussed more fully below, we remain concerned that the failure to clarify the regulations will harm participants' ability to challenge incorrect County actions and their ability to obtain effective representation." (NLS)

Response:

Please see response to Part g, Comment 32, Paragraph 2.

65. Comment:

"Finally, we believe that the sections on screening Limited English Proficient ('LEP') participants also need to be strengthened. The Department's additions, based on earlier testimony, regarding bilingual, bicultural workers and the possibility of self-referring to an evaluation are important improvements. However, the capacity of even bilingual workers to do an adequate screening is suspect. In addition, having LEP participants sign waivers is even more problematic. (Please see LSNC's comments by Ms. Berger for specific suggestions in this area. [Comment 9])" (NLS)

Response:

Please see response to Part g, Comment 8.

66. Comment:

"DSS Needs to Address Exempting Learning Disabled Participants as an Appropriate Accommodation.

"The regulations package needs to include some instruction to the CWD regarding when it is appropriate to exempt a participant from welfare-to-work participation on the basis of her learning disability. Regulations state that if a participant has a disability expected to last at least 30 calendar days and the disability significantly impairs the individual's ability to participate in welfare-to-work, she is exempt from welfare-to-work participation requirements (42-712.441). Because of the unique nature of learning disabilities, the most appropriate accommodation for a learning disabled participant may be an exemption from welfare-to-work activities.

"The Final Statement of Reasons states that the regulations were not amended to mention the possibility of exemption because 'existing regulations protect all participants who provide documentation that they meet the criteria for exemption' (Statement at p. 54) [Part f, Response 34]. The documentation requirements for a disability exemption are outlined in 42-712.442. A participant must 'provide verification from a doctor as defined in Section 42-701.2(d)(2) that includes the disability, the expected duration of the disability, and the extent to which the disability impairs employment and/or participation in the welfare-to-work activities' (42-712.442).

"All of the required documentation information should be contained in the learning disabilities evaluation report generated after the learning disabilities evaluation. However, it is unlikely that the learning disability evaluators will meet the definition of 'doctor' from Section 42-701.2(d)(2). That section defines a doctor as 'a health care professional who is licensed by a state to diagnose/treat physical and mental impairments' (42-701.2(d)(2)). A learning disability evaluator could easily meet the qualifications outlined in 42-722.46 to be considered a qualified learning disabilities evaluation professional without meeting the definition of a doctor. Thus, the learning

disability evaluation reports generated by these evaluators would be insufficient to allow a participant to qualify for an exemption from welfare-to-work activities. A participant would need to obtain additional verification in order to qualify—verification that can be very expensive and difficult to obtain.

"Because of this problem, it is insufficient to rely on the existing exemption regulation to ensure that learning disabled participants are exempted when appropriate. Indeed, that section may also need modifications. However, the regulations in this regulatory packet need to include references to the exemption policy and a statement that the learning disabilities evaluation report generated by a learning disabilities evaluation professional is sufficient documentation to qualify a participant for an exemption on the basis of disability. We suggest the following modifications:

> "'42-722.516(f): Whether the participant should be exempted from welfare-to-work activities or the range of recommended accommodations . . . '
>
> "'42-722.532(c): As necessary, exempt the participant from welfare-to-work participation or develop or modify the welfare-to-work activities and/or welfare-to-work plan . . . '
>
> "'42-722.61: Unless exempt pursuant to Section 41-712, an individual with a learning disability must participate for the required number of hours as specified in Sections 42-711.41 or .42. The report of a learning disabilities evaluation professional shall be sufficient documentation to satisfy the documentation requirement of Section 42-712.442(a).'
>
> "'42-722.723: As necessary, the county shall also review the individual for exemption. If not exempt, the county shall also review the welfare-to-work activity . . . '" (NLS)

Response:

Please see response to Part g, Comment 28.

67. Comment:

**"DSS Should Strengthen the Regulations to Address Reasonable Accommodations.**

"Viewed as a whole, the proposed regulation package displays a poor understanding of the ADA requirement that DSS and CWDs provide reasonable accommodations to participants identified as learning disabled. As discussed above, Title II of the ADA applies to DSS and all CWDs, prohibiting them from discriminating on the basis of disability. As also discussed above, participants with learning disabilities are considered by the ADA to be disabled. This prohibition applies to every aspect of the program, including welfare-to-work participation, contact with welfare-to-work caseworkers, and receiving written communication from the CWD. The ADA's

prohibition against discrimination includes an affirmative duty for public entities, who must 'make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination' (28 C.F.R. § 35.130(b)(7)).

"The accommodations contemplated by the proposed regulation package fall far short of the ADA's requirements. The package refers only to 'reasonable accommodations needed to help the participant be successful in completing his/her welfare-to-work activities' (42-722.532(b)). The Final Statement of Reasons states that 'the Department is not amending [the regulations] in response to the . . . comment proposing the requirement that accommodations be provided not only for participation in welfare-to-work activities, but also for participation with general program requirements. This part of the comment is outside the scope of this regulations package' (Statement at p. 45) [Part f, Response 24].

"Even if DSS wishes to confine the scope of this regulations package to the welfare-to-work program, modifications are necessary in order to comply with the requirements of the ADA. Learning disabled participants are entitled, under the ADA, to reasonable accommodations in all aspects of the welfare-to-work program, not solely participation in welfare-to-work activities. For example, if a learning disabled participant has trouble with reading and cannot understand written communication, DSS must use alternative forms of communication with that participant in order to avoid discrimination. Similarly, if a learning disabled participant has difficulty processing auditory information, the welfare-to-work caseworker must provide the participant with written information in order to avoid discrimination.

"Learning disabled participants are also entitled to reasonable modifications outside of the welfare-to-work program. For example, the learning disabled participants described above would be entitled to similar reasonable accommodations regarding communication from general program caseworkers. If DSS does not wish to modify this regulation package to ensure compliance with the ADA's anti-discrimination provisions, it should at minimum issue an ACL clarifying that once a recipient is identified as having a learning disability that requires accommodations, the county must determine what accommodations are appropriate in aspects of the program other than participation in welfare-to-work activities. The lack of an existing process to communicate the need for accommodations throughout the program necessitates this action.

"Other sections of the regulations package indicate that DSS does not fully understand the nature of providing accommodations. The package provides no guidance to CWDs in determining what accommodations are appropriate for an individual participant. We requested the addition of such a section in our comments on the previous regulations (NLS comments at p. 8) [Part f, Comment 35]. The section was not added, the Final Statement of Reasons stating that 'it is not necessary to add a section to address 'individualizing' accommodations, as the learning disabilities regulations deal with individuals. Modifying welfare-to-work assignments to include necessary accommodations is done on a case-by-case basis' (Statement at p. 55) [Part f, Response 35]. This response does not address the underlying concern that CWDs are not

prepared to make the case-by-case determinations of how to modify welfare-to-work assignments to accommodate the disabilities of individual participants.

"The concern that CWDs are unprepared to make accommodations without additional information is based on our experience with the Los Angeles County Department of Public Social Services (DPSS). When caseworkers offer accommodations to individual participants, the workers have offered modifications while maintaining the same number of hours of participation and the same welfare-to-work activities. In speaking with workers, they have indicated that they do not feel they have the authority to make broader modifications, such as changing the welfare-to-work activity or exempting the participant from welfare-to-work participation on the basis of her disability." (NLS)

Response:

Please see response to Part g, Comment 37.

h) Second 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a second 15-day renotice and complete text of modifications made to the regulations were made available to the public following the first 15-day renotice period from January 23, 2004 to February 6, 2004. Written testimony on the second modifications renoticed for public comment from April 2, 2004 to April 16, 2004 was received from the following:

County of Los Angeles Department of Public Social Services (LA DPSS)

Neighborhood Legal Services of Los Angeles County (NLS LAC)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 42-701.2(l)(2)

1. Comment:

"**The Definition of Learning Disabilities in § 42-701.2(2) Must Be Revised to Avoid Unintended Discrimination.**

"In our comments on the previously released versions of the proposed regulations, we expressed our concerns regarding the regulations' definition of learning disabilities. We continue to be especially troubled by paragraph 3 of Section 42-701.2(2), which requires that participants' disorders 'interfere with the participant's ability to obtain or retain employment or to participate in welfare-to-work activities' in order to qualify them as learning disabled. The incorporation of this language into the definition of a learning disability is inappropriate and raises significant problems, discussed in our previous comments and incorporated herein by reference (Comments on Initial Regulations, p. 3 ¶1-3 [Part f, Comment 3]; Comments on Re-Released Regulations, p.

2 ¶4 – p. 4 ¶1 [Part g, Comment 3]). DSS needs to clarify the distinction between the definition of a learning disability and the subsequent issue of whether such a disability impacts welfare-to-work participation.

"This definition substantially diverges from the definition of disability in the ADA, raising serious legal issues regarding CWDs' ability to comply with the ADA. The ADA defines a disability as 'a physical or mental impairment that substantially limits one or more of the major life activities of such individual' (42 U.S.C.A. § 12102(2)). The ADA considers learning and reading to be major life activities (29 C.F.R. § 1630.2(i)). A participant with a mental impairment that substantially limits her ability to learn is thus considered disabled under the ADA. However, if her limited ability to learn does not interfere with her ability to participate in welfare-to-work activities she will not be considered to have a learning disability under the regulatory definition. Thus, some participants will be considered to be disabled under the ADA but will not be considered disabled by CalWORKs and the CWD.

"This divergence in definitions may raise serious problems. Title II of the ADA prohibits public entities such as the Department from discriminating against the disabled on the basis of their disabilities (42 U.S.C.A. § 12131(1)). The Department is required to avoid discrimination against disabled participants and to provide those participants with reasonable accommodations when necessary. However, if the regulations are implemented as written, there will be a number of participants who meet the ADA definition of disability and are entitled to ADA protections that DSS and the CWD will fail to identify because of the flawed definition of learning disabilities. Because of the difference in definitions, there is no way for the Department to ensure that all participants who are disabled under the ADA are receiving necessary protections.

"Our experiences with the Los Angeles County Department of Public Social Services ("DPSS") have demonstrated that the concern that CWDs will fail to identify as disabled some participants entitled to ADA protections is not theoretical. Please see our previous comments, incorporated herein by reference, for an expanded discussion of this point (Initial Comments on the Regulations, p. 3 ¶ 2 [Part f, Comment 3]; Comments on Re-Released Regulations, p. 3 ¶ 4 [Part g, Comment 3]).

"We recognize the importance of considering the impact of a learning disability on a recipient's ability to participate in CalWORKs welfare-to-work activities or to retain employment. However, we believe this consideration is appropriate only when determining what accommodations, if any, are appropriate for the recipient to participate in welfare-to-work activities. Incorporating this consideration into the determination of whether a learning disability exists will inevitably fail to identify as learning disabled participants who are legally entitled by the ADA to reasonable accommodations. To avoid these significant legal problems, we recommend deleting the third paragraph of the definition entirely.

"Alternatively, the definition should be split into three separate sections in order to clarify the evaluation sequence for CWDs. Please see our previous comments for an

expanded discussion of the three portions of the evaluation sequence (Comments on Re-Released Regulations, p. 3 ¶ 6 – p. 4 ¶ 1 [Part g, Comment 3]).

"In the Final Statement of Reasons, the Department states that responding to comments regarding the flaws in the definition of learning disabilities is 'outside the scope of the 15-day renotice changes' (Final Statement of Reasons ('FSOR'), p. 12 [Part g, Response to Comment 3]). However, it is necessary to modify this section to avoid violating the ADA." (NLS LAC)

Comment:

The comment is outside the scope of the second 15-day renotice package.

Section 42-722.465

2. Comment:

"We continue to strongly support deleting the language in this section regarding evaluations for non-English/non-Spanish participants since there are no validated or recognized tools at this time. This requirement could result in providing different levels of service, which could result in legal action against the County. Any applicable procedure required for one language group should be required for all.

"In the absence of validated evaluation tests/instruments for non-English/non-Spanish speaking participants, we are requesting further guidance from CDSS." (LA DPSS)

Response:

The comment is outside the scope of the second 15-day renotice package.

Section 42-722.814

3. Comment:

**"DSS Should Retain the Language 'or benefit from' in § 42-722.814 Regarding Retrospective Adjustment of the 18- to 24-month Clock.**

"Section 42-722.81 outlines the criteria that a participant must meet in order to have her 18- to 24-month clock retrospectively adjusted. Previously, the regulations required that the participant 'did not make satisfactory progress in or benefit from the welfare-to-work activities,' but the modified regulations remove the phrase 'or benefit from'.

"Removing the phrase 'or benefit from' again raises the strong possibility that CWDs implementing the regulations as currently written will violate the ADA. As discussed above, the ADA considers participants with learning disabilities to be disabled and

entitled to ADA protections. DSS is prohibited from discriminating against participants with disabilities by Title II of the ADA (42 U.S.C.A. § 12131(1)).

"More specifically, the ADA prohibits the Department from 'providing [disabled participants] an opportunity to participate in *or benefit from* the aid, benefit or service that is not equal or not as effective in providing an equal opportunity *to obtain the same result or reach the same benefit'* (28 C.F.R. §§ 35.130(b)(1)(ii)-(iii), emphasis added). This provision requires the Department not only to offer disabled participants the opportunity to participate in welfare-to-work activities, but also to take measures to ensure that disabled participants have an equal opportunity to benefit from welfare-to-work activities as non-disabled participants. Ensuring that disabled participants receive an equal opportunity to benefit from welfare-to-work activities is possible only by retaining the phrase 'or benefit from' in the criteria to retrospectively adjust the 18- to 24-month clock of a learning disabled participant.

" Additionally, the Department should not remove the phrase 'or benefit from' from the criteria because the phrase is used in the authorizing statute and the All County Letter outlining the learning disability policy. Please see our previous comments, incorporated herein by reference, for an expanded discussion of this point (Comments on Re-Released Regulations, p. 5 ¶ 4-5 [Part g, Comment 48]).

"The Final Statement of Reasons states that 'trying to determine if an individual is 'failing to benefit from an activity' is much too vague of a standard in many cases' (FSOR, p. 42 [Part g, Response to Comment 47]). It states that determining if a participant made satisfactory progress in an activity 'can be measured through the use of objective criteria' (FSOR, p. 42 [Part g, Response to Comment 47]). It lists possible objective criteria of satisfactory progress, including 'test scores, completing of required program components or assignments, and course grades' (FSOR, p. 42 [Part g, Response to Comment 47]).

"In our experience with DPSS, satisfactory progress is strictly defined only as maintaining a grade point average of 2.0 or higher. While this definition provides CWDs with objective criteria for determining progress, it does not ask CWDs to examine a participant's progress in individual courses or programs, much less specific components or assignments within a course. Because CWDs have informally adopted this definition of 'satisfactory progress', it is extremely unlikely that they will examine criteria such as test scores or completion of required program assignments without additional guidance defining 'satisfactory progress' to include consideration of such objective criteria.

"In past comments, NLS has suggested examples of a participant's failure to benefit that could be provided to CWDs (Initial Comments on Regulations, p. 15 ¶ 5 [Part f, Comment 76]; Comments on Re-Released Regulations, p. 6 ¶ 4 [Part g, Comment 48]). These proposed examples contained objective criteria that could be used by CWDs to evaluate a participant's failure or success to benefit from an activity. The proposed criteria are progressing in a welfare-to-work program at a slower rate than a non-disabled participant; being unable to do the assessed activity for the entirety of the

required hours; or being assigned activities that are not related to the assessed employment goal. We urge the Department to issue specific guidance to CWDs regarding the expanded definition of 'satisfactory progress' and the above-listed objective criteria of 'benefit from.' Alternatively, the Department should require CWDs to develop criteria to define 'benefit from.'" (NLS LAC)

Response:

The comment is outside the scope of the second 15-day renotice package.

General

4. Comment:

**"DSS Needs to Clarify that Disabled Participants May Receive Accommodations Throughout All CWD Activities, Not Simply in Welfare-to-Work Participation.**

"Throughout the regulatory package, the regulations discuss providing learning disabled participants with accommodations within their welfare-to-work activities. However, the contemplated accommodations are limited to the welfare-to-work activities. Nowhere are CWDs instructed to provide learning disabled participants with accommodations in the welfare-to-work program in general, for example in communicating with a welfare-to-work eligibility worker. Additionally, nowhere are CWDs instructed to provide learning disabled participants with accommodations throughout all CWD activities, not only in the welfare-to-work program. This limited provision of accommodations does not comply with ADA requirements. For an expanded discussion of this point, please see our previous comments, incorporated herein by reference (Initial Comments on Regulations p. 1 ¶ 3 – p. 2 ¶ 1 [Part f, Comment 100]; Comments on Re-Released Regulations p. 1 ¶ 3 [Part g, Comment 62] and p. 8 ¶ 1 – 4 [Part g, Comment 67]).

"The Final Statement of Reasons states that comments urging DSS to expand the provision of accommodations beyond welfare-to-work participating is 'outside the scope of the 15-day renotice changes' (FSOR, p. 35 [Part g, Response to Comment 37]). However, modifications in this aspect of the regulations package are necessary in order to avoid violations of the ADA. Learning disabled participants are entitled, under the ADA, to reasonable accommodations in all aspects of the welfare-to-work program, not solely participation in welfare-to-work activities. Additionally, learning disabled participants are entitled to reasonable accommodations outside of the welfare-to-work program. For example, if a learning disabled participant has trouble with reading and cannot understand written communication, the CWD must use alternative forms of communication with that participant in order to avoid discrimination.

"If DSS does not wish to modify this regulation package to ensure compliance with the ADA's anti-discrimination provisions, it should at minimum issue an ACL clarifying that once a participant is identified as having a learning disability that requires

accommodations, the county must determine what accommodations are appropriate in aspects of the program beyond participation in welfare-to-work activities. Failure to clarify this issue will result in a failure to provide reasonable accommodations throughout the program in violation of the ADA." (NLS LAC)

Response:

The comment is outside the scope of the second 15-day renotice package.

5. Comment:

**"DSS Must Adopt Standards for CWDs Regarding the Provision of Appropriate Accommodations.**

"As discussed above [Part h, Comment 4.], the ADA requires DSS and CWDs to provide learning disabled participants with reasonable accommodations to ensure the avoidance of disability-based discrimination. However, the regulatory package provides CWDs with no guidance to determine what accommodations are appropriate for an individual participant. This issue has been raised in our previous comments, yet we have not received a response that addresses the concern that CWDs are not prepared or equipped to make the case-by-case determinations of how to modify welfare-to-work assignments to accommodate the disabilities of individual participants.

" In speaking with DPSS caseworkers, we have found that workers feel unprepared to make accommodations without additional information. When offering accommodations to individual participants, workers offer minor modifications while maintaining the same number of hours of required participation and the same welfare-to-work activities. The workers have indicated that they do not feel they have the authority to make broader modifications, such as changing the welfare-to-work activity. Without additional guidance regarding the individualized nature of accommodations and the ability to modify any program rule or policy to accommodate an individual, it is inevitable that workers will fail to make reasonable accommodations that sufficiently address the disability of a participant. This failure to provide appropriate accommodations will result in continuing discrimination in violation of the ADA." (NLS LAC)

Response:

The comment is outside the scope of the second 15-day renotice package.

6. Comment:

**"DSS Must Adopt Standards for CWDs Regarding the Deference Given Pre-Existing Learning Disability Evaluations**

"Section 42-722.24 outlines the options open to a CWD should a participant present a pre-existing evaluation of her learning disability performed by an evaluator outside the CalWORKs welfare-to-work program. The regulations allow the CWD the unfettered discretion to accept all, part, or none of the evaluation and permit the CWD to refer the participant to another learning disabilities evaluation. It also allows CWDs to notify the participant verbally regarding whether the CWD will accept all, part, or none of the pre-existing evaluation. It is essential that this notification be done in writing, rather than verbally.

"Our first concern with this unguided discretion is that each CWD, or even individual districts within a CWD, may make different decisions about accepting previous evaluations. This would lead to a pattern of arbitrary and capricious decisions across and even within counties. Those arbitrary and capricious decisions would violate the guarantee of substantive due process outline in the California Constitution Article 1 § 7. For an expanded discussion of this point, please refer to our previous comments, incorporated herein by reference (Comments on Re-Released Regulations, p. 4 ¶ 2 – 4 [Part g, Comment 16]). The Final Statement of Reasons addresses this concern by stating that 'counties have previously been instructed that, in areas where they have program flexibility and operational discretion, they must develop written policies and procedures to ensure equitable treatment of clients' (FSOR, p. 21 [Part g, Response to Comment 15]). However, this reply does nothing to address the possibility to arbitrary and capricious decisions across counties, where different CWDs have different policies regarding acceptance of pre-existing evaluations.

"Because of this concern regarding arbitrary and capricious decisions, we strongly suggest that the regulations provide CWDs with clear standards that they can use to determine whether or not to accept an existing learning disability evaluation. We agree with the Department when it states that 'a county has the right to question the validity of any prior learning disabilities evaluation' (FSOR, p. 21 [Part g, Response to Comment 15]), but suggest that CWDs be given concrete criteria with which to judge the validity of the prior evaluations. We have proposed sample criteria in our previous comments, incorporated herein by reference (Initial Comments on Regulations, p. 9 ¶ 3 [Part f, Comment 35]; Comments on Re-Released Regulations, p. 4 ¶ 5 – p. 5 ¶ 1 – 2 [Part g, Comment 16]).

"As described in our previous comments, undergoing duplicative learning disabilities evaluations can be a barrier and significant hardship for learning disabled participants. Because of their disabilities, many learning disabled participants experience severe anxiety in testing situations. The standard evaluation tools used in a learning disability evaluation are designed to probe the cognitive weaknesses these participants experience and force them to complete challenging tasks in a short time period. Especially for participants who have already undergone one such intensive evaluation and know what it entails, an upcoming evaluation can be a source of great worry and stress.

"Although it is necessary to ask a participant to undergo such an experience to determine if a learning disability exists, there is no sense in repeating the anxiety to

duplicate the results. In fact, requiring a participant to undergo such a hardship when a valid pre-existing evaluation exists may violate the ADA. The ADA prohibits public entities such as DSS and CWDs from using 'criteria or methods of administration' that have a discriminatory effect (28 C.F.R. 35.130(b)(3)(i)-(iii)). Asking participants with a suspected or unverified learning disability to undergo an intensive evaluation to determine if they are disabled would not violate this provision. However, requiring learning disabled participants with a valid pre-existing evaluation to undergo the anxiety and trauma of a repeat evaluation may well constitute discrimination in violation of the ADA.

"In addition, NLS renews its concerns with regard to the availability of test reports and disclosure to authorized representatives. This issue is discussed at length in our previous comments, incorporated herein by reference (Initial Comments on Regulations, p. 11 ¶ 6 – p. 12 ¶ 1 – 4; p. 11 ¶ 6; p. 13 ¶ 2 [Part f, Comments 49, 50, and 59]; Comments on Re-Released Regulations, p. 2 ¶ 2; p. 9 ¶ 3 – 5 – p. 10 ¶ 1 – 2 [Part g, Comments 63 and 66]). With regards to test responses and scores, the listing of what is required in the learning disabilities evaluation report (outlined in § 42-722.516) does not explicitly require that the report contain an explanation or summary of any time regarding which tests were administered and the results, scores, or percentiles of the tests. The failure to include this information makes it impossible for Authorized Representatives or third-party evaluators to determine which tests were administered during the evaluation and how the participant scored on those tests. While we recognize the proprietary nature of the tests and scoring sheets, at a minimum, language should be added to require that the report include a summary of all tests administered and the participant's scores.

"Finally, we incorporate herein by reference our previous comments regarding the exemption of learning disabled participants from welfare-to-work participation when appropriate (Initial Comments on Regulations, p. 8 ¶ 2 [Part f, Comment 31]; p. 11 ¶ 5 [Part f, Comment 49]; p. 12 ¶ 5 [Part f, Comment 57]; p. 14 ¶ 4 [Part f, Comment 71]; Comments on Re-Released Regulations p. 2 ¶ 1; [Part g, Comment 62]p. 6 ¶ 5 – p. 7 ¶ 1 – 4 [Part g, Comment 66]). We especially renew our concern that because the learning disability evaluators will not meet the definition of 'doctor' from Section 42-701.2(d)(2), the learning disability evaluation reports will not be sufficient documentation to qualify a learning disabled recipient for an exemption. This would mean that a participant would need to obtain additional verification of her learning disability to qualify for an exemption – verification that can be very costly and difficult to obtain. Thus, it is insufficient to rely on the existing exemption regulation" (NLS LAC).

Response:

The comment is outside the scope of the second 15-day renotice package.